

Technical advice for the review of the IORP II Directive

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EXECUTIVE SUMMARY

Introduction

This document sets out technical advice for the review of IORP II Directive. The advice is given in response to a call for advice from the European Commission. EIOPA was requested to provide its final advice by 1 October 2023.

The call for advice invites EIOPA to provide advice covering in particular the following areas:

- ▶ The adequacy of the Directive from a prudential and governance point of view and the Directive's impact on the stability of different types of IORPs;
- ▶ Cross-border activity and transfers;
- ▶ The functioning of the Pension Benefit Statement;
- ▶ The need for and possible ways to adapt the regulatory framework to the shift from defined benefit to defined contribution schemes;
- ▶ The sustainability aspects of the fiduciary duties and stewardship rules of IORPs;
- ▶ Prudential requirements to include diversity and inclusion issues in relation to management bodies.

In the area of prudential and governance standards EIOPA identified review items in particular on proportionality, liquidity risk, the treatment of conflict of interests, the effective use of data, and standardised risk assessment.

The following paragraphs summarise the main content of the advice per topic.

Proportionality

This technical advice explores several options to enhance proportionality in the IORP II Directive, considering the results of a mapping of the implementation of proportionality at national level.

The IORP II Directive allows Member States to exempt small IORPs from certain requirements. The threshold for this exemption – 100 members – is relatively low compared to the thresholds used in the Solvency II Directive.

EIOPA advises to increase the threshold to both 1000 members and beneficiaries and EUR 25 million in assets, including a grandfathering clause for IORPs with less than 100 members that currently make use of the exemption. Increasing the threshold would provide Member States more leeway

to exempt small IORPs from certain requirements, if they consider that to be appropriate in view of the risk profile of their small IORPs, but also from the requirements in the SFDR and the non-simplified ICT risk management provisions in the DORA. EIOPA advises to consider a higher threshold, i.e. an asset condition of EUR 50 million instead of EUR 25 million, for the purpose of the small IORP thresholds in DORA and SFDR during their future reviews.

The advice also considers the introduction of the concept of low-risk profile IORPs, which would be defined using a set of quantitative criteria and these IORPs would then be subject to certain proportionality measures. EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive. The main reason is that the IORP II Directive already allows Member States to apply a proportionate approach through the small-IORP exemption and principle-based rather than precise requirements. Indeed, Member States have the possibility to apply the concept of low-risk profile IORPs at national level within the boundaries of the IORP II Directive. To promote risk-based supervision and to enhance supervisory convergence, EIOPA will consider including in its future work programmes the application of proportionality by NCAs using the convergence tools at its disposal.

EIOPA advises that the governance and prudential standards are applied in a manner that is proportionate to the risk profile of IORPs – and not to their size. Therefore, the advice recommends that the proportionality formulations in the IORP II Directive should be restricted to the ‘nature, scale and complexity of the activities of the IORP’.

Liquidity risk

The UK events in the fall of 2022 suggest that IORPs with derivative hedging positions are exposed to substantial liquidity risks. The inability of IORPs to raise cash to meet margin calls may result in fire-sales of assets, lowering investment returns and jeopardising financial stability. Therefore, it is important to foster the IORPs’ assessment and management of liquidity risks relating to derivative positions and the relevant NCAs’ monitoring of the IORPs’ ability to manage and mitigate the identified liquidity risks. EIOPA will issue guidelines or an opinion on the supervision of liquidity risk in relation to IORPs with material liquidity risk.

Conditions of operation and conflicts of interest

EIOPA advises to strengthen the IORPs’ conditions of operation in order to ensure the proper functioning of the internal market, in the absence of harmonised rules on the registration or authorisation of IORPs. The advice also recommends that NCAs carry out a prudential assessment during the registration or authorisation process and assess the operational viability and sustainability of IORPs as part of the supervisory review process. Most IORPs tend to outsource their activities to service providers. In a context where increasingly members are bearing risk and costs, EIOPA advises to enhance the requirements on the management and prevention of conflicts of

interest arising from the relationship between IORPs and service providers to prevent detriment to members and beneficiaries.

Effective use of data

The IORP II Directive empowers NCAs to collect data necessary for their supervision, but regular quantitative reporting is not explicitly mentioned. Consequently, NCAs are not always afforded the power at national level to independently decide on the content and deadlines of such regular quantitative data reporting of IORPs to the NCA. In addition, some NCAs have indicated that the absence of a legal reference in the IORP II Directive complicates providing data to EIOPA needed for EIOPA to fulfil its tasks and duties. The advice recommends closing these gaps by including an empowerment in the IORP II Directive enabling NCAs also to collect quantitative data from IORPs on a regular basis.

Standardised risk assessment

The IORP II Directive takes a minimum harmonisation approach, resulting in a wide variety of national valuation standards and funding requirements. In the advice, EIOPA reiterates its previous Opinion to the EU institutions on a common framework for risk assessment and transparency for IORPs. That Opinion recommends that harmonised solvency rules should not be included in the IORP II Directive at this point in time, but that a standardised risk assessment should be introduced based on a market-consistent balance sheet and common stress scenarios. A better understanding of the risks and vulnerabilities of DB IORPs would contribute to their resilience and sustainability and enhances the protection of members and beneficiaries. However, EIOPA does not advise any change to the IORP II Directive in this area.

Cross-border activities and transfers

This advice consolidates EIOPA reports dating back to 2017 on the implementation and effectiveness of the IORP II Directive in developing the internal market for pensions. Generally, the findings of the reports are negative, and the internal market remains underdeveloped. To enhance the functioning of the internal market and to facilitate cross-border activities and transfers, the advice recommends – besides the introduction of the prudential assessment as part of the registration or authorisation process and ongoing supervision – a uniform EU definition of the majority of members and beneficiaries or their representatives needed to approve a cross-border transfer as well as some simplifications of the notification procedures for cross-border activity of defined contributions IORPs. Beyond the IORP II Directive, the Commission is also advised to explore other possibilities to genuinely develop the internal market for occupational pension provision.

Information to members and beneficiaries and other business conduct requirements

This advice aims to further develop the requirements on information to members and beneficiaries in order to reflect relevant trends, such as digitalisation and the shift to defined contributions, insights from behavioural research and analysis conducted by EIOPA in previous reports since the introduction of the IORP II Directive. This includes advice regarding the structure and contents of the Pension Benefit Statement, the appropriate presentation of information in a digital context and how to provide additional transparency on costs and charges. EIOPA also recommends to further develop the requirements on projections given the importance of the information on estimated future benefits for retirement planning.

Taking into account business conduct requirements in other EU frameworks applying to investments products, including pension products, as well as requirements in some Member States, and in the context of the shift to defined contributions, EIOPA advises to introduce requirements concerning the appropriate structuring and implementation of the pension scheme by IORPs, as well as to provide that IORPs have a duty of care towards their members and beneficiaries.

Shift from defined benefit to defined contributions

The European pensions landscape is in a process of transitioning from a mix of defined benefits and defined contributions products towards one dominated by defined contributions. The call for advice asks EIOPA to explore the need for and possible ways to adapt the regulatory framework to the shift, noting the particular risks that exist for members and beneficiaries of DC schemes. This advice identifies the main risks that individual members face as they build up their own pension pot, such as: retirement income risk, investment risk, applicable costs and charges, administration and governance risks and the knowledge gap. In order to address these risks, and based on past work developed by EIOPA around defined contributions pensions, this advice contains recommendations on long-term risk assessments of IORPs with defined contributions schemes, as well as on the reporting of costs and charges, on complaints procedures, on the contribution of members and beneficiaries in the decision-making of their IORP and on the fitness of those who run IORPs with defined contributions schemes.

Sustainability

According to the prudent person rule, IORPs are currently not required to integrate sustainability factors in their investment decisions. The advice recommends introducing provisions on sustainability factors similar to insurers. The aforementioned advice relates in particular to the reflection of sustainability risks in the investment decisions of IORPs, the potential long-term impact of IORPs' investment strategy and decisions on sustainability factors, the consideration of the sustainability preferences of members and beneficiaries in the investment decisions of IORPs and

the stewardship of IORPs by engaging with investees to support the transition towards more sustainable business activity.

This advice also suggests raising awareness of to what extent Member States can take active steps to reduce the gender pension gap that will have an impact on the social aspect of sustainability.

Diversity and inclusion

Diversity of management bodies is important to ensure adequate representation in the management body of the population as a whole, to facilitate independent opinions and critical challenge, and to more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions. In order to improve the diversity of the management board of IORPs, this advice recommends in particular a policy of IORPs to promote diversity and inclusion in the management body, a target for the representation of the underrepresented gender in the management body, gender neutrality of remuneration policies and reporting by IORPs on diversity and inclusion.

1. INTRODUCTION

1.1. CALL FOR ADVICE

In December 2016, Directive (EU) 2016/2341 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (IORPs)¹ (hereafter “IORP II Directive”) was adopted. The Directive provides that the Commission shall review the Directive by 13 January 2023.² That review shall in particular consider the adequacy of the Directive from a prudential and governance point of view, cross-border activity, the experience acquired in applying the Directive and its impact on the stability of IORPs, and the Pension Benefit Statement (PBS).

Against that background, the European Commission (COM) issued a call for technical advice to EIOPA regarding the evaluation and review of the IORP II Directive in June 2022 (call for advice – CfA).³ In the CfA the COM invites EIOPA to provide advice covering in particular the following areas:

- ▶ The adequacy of the Directive from a prudential and governance point of view and the Directive’s impact on the stability of different types of IORPs;
- ▶ Cross-border activity and transfers;
- ▶ The functioning of the PBS;
- ▶ The need for and possible ways to adapt the regulatory framework to the shift from defined benefit (DB) to defined contribution (DC) schemes;
- ▶ The sustainability aspects of the fiduciary duties and stewardship rules of IORPs;
- ▶ Prudential requirements to include diversity and inclusion issues in relation to management bodies.

EIOPA was requested to provide its technical advice by 1 October 2023.⁴

¹ OJ L 354, 23.12.2016, p. 37–85.

² See Article 62 of the IORP II Directive.

³ See [European Commission, Call for technical advice to the EIOPA regarding the evaluation and review of the IORP II Directive, Ref. Ares\(2022\)4365205, 14 June 2022](#).

⁴ The date of 1 July 2023 set in the CfA for EIOPA’s technical advice was delayed by the Commission by three months. See [minutes of the EIOPA Board of supervisors meeting on 29 September 2022](#), paragraph 40.

EIOPA provides the advice in accordance with Article 16a of Regulation (EU) No 1094/2010.

1.2. EUROPEAN IORP SECTOR

The European occupational pensions sector consisted end 2021 of 88,848 IORPs, having 58.4 million members and beneficiaries and disposing of EUR 2,920 billion in assets. The sector is very concentrated with IORPs in NL accounting for 67% of the assets and IE accounting for 99% of the number of IORPs.

The past decades, the IORP sector witnessed a trend from DB to DC schemes, although to varying degrees in the different Member States. At the end of 2021, 43% of active members were enrolled in a DC scheme compared to 33% in a DB scheme, while for 24% no split is available. In contrast, DB schemes account for 73% of the total assets under management (AuM). The Dutch pension system is also transitioning to DC which, when completed, will make the European IORP sector predominantly a DC one. Following the transition, 64% of active members will be expected to participate in a DC scheme, while DC assets will probably account for 79% of total assets.

Another trend is the increased number of multi-sponsor IORPs set up by service providers – the so-called multi-sponsor IORP providers (MIPs). In 2021, MIPs accounted for circa EUR 210 billion of AuM. MIPs serve approximately 10.1 million members and beneficiaries, which is almost 20% of the total IORP membership. In six Member States, MIPs operate cross-border activities. Although MIPs contribute to meeting the evolving sponsor demand for occupational pensions, such type of IORPs also raise prudential issues around the long-term viability of business models and conflicts of interests between IORPs and the founding service providers.

At the end of 2021, there were 31 cross-border IORPs active. Cross-border IORPs have around 93 thousand members and EUR 13 billion in AuM, representing only a small fraction of respectively IORPs' total number of members and beneficiaries and assets⁵. The number of cross-border IORPs has stopped expanding since 2010 and is not expected to grow substantially in the near future. As such, the original goal of the IORP Directive to foster a thriving internal market for occupational pension provision has not been achieved.

Please refer to annex 1 for more details on the European IORP market.

⁵ See [EIOPA, 2022 report on cross-border IORPs, EIOPA-BoS-22/556, 16 December 2022](#).

1.3. ECONOMIC AND SOCIAL CONTEXT

1.3.1. AGEING AND THE GROWING PENSION GAP

Due to population ageing, the number of older persons (65+) as a percentage of the working age population (20-64) will rise dramatically in the EU. This so-called old-age dependency ratio will grow from 34.4% in 2019 to 59.2% in 2070.⁶ This means that there will be fewer working-age people to pay for the state pensions of older people in the future.

The major challenge is to provide citizens with adequate retirement income and to ensure the sustainability of public finances. Many Member States have already taken measures to make future public finances more sustainable, such as increasing the (future) retirement age, policies to increase labour market participation, in order to increase tax income and to reduce unemployment benefits, and reforms of the public pension system. Although the reforms of state pension systems contribute to their sustainability, they also jeopardise the future adequacy of state pension provision. In fact, the COM expects that, in the EU, the average state pension as a percentage of the earnings at retirement will fall from 46.2% in 2019 to 37.5% in 2070.⁷

Besides the overall future challenge due to ageing, pension systems in the EU are already facing several other important challenges right now. In 2019, almost 18.5% of pensioners (16.1 million persons) were at risk of poverty or social exclusion in the EU. This risk of poverty is almost 35% higher for women than for men. Moreover, the so-called gender pension gap – defined as the percentage difference in the average pension received by women and by men – amounts to 29.5%. This is due to existing labour market inequalities between men and women (women getting paid less for same work and/or women working less) and pension systems not accommodating care-related career breaks.⁸

An important step to ensuring adequate and sustainable pensions is to enhance transparency of the existing and future pensions gap. EIOPA delivered advice to the COM on pension tracking systems⁹ (for individual citizens) (PTS) and pension dashboards¹⁰ (for policy makers) to identify emerging gaps through better and more comprehensive information. To stimulate participation in occupational

⁶ [European Commission, Directorate-General for Economic and Financial Affairs, The 2021 Ageing Report, Institutional Paper 148, May 2021.](#)

⁷ [European Commission, Directorate-General for Economic and Financial Affairs, The 2021 Ageing Report, Institutional Paper 148, May 2021.](#)

⁸ [European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2021 Pension Adequacy Report, June 2021.](#)

⁹ [EIOPA, Technical advice on the development of pension tracking systems, EIOPA-BoS-21-535, 1 December 2021.](#)

¹⁰ [EIOPA, Technical advice on the development of pension dashboards and the collection of pensions data, EIOPA-BoS-21/540, 1 December 2021.](#)

pension schemes, the COM commissioned a study to analyse auto-enrolment with a view to developing best practices for such systems across Member States.¹¹

Pension systems should strike a good balance between public pay-as-you-go pensions and funded pensions in order to diversify demographic and interest rate risks. Public pay-as-you-go pensions are susceptible to population ageing, while funded pensions are more exposed to low interest rates and investment returns.

1.3.2. LOW-INTEREST RATE ENVIRONMENT

The low interest rate environment has a negative impact on capital funded pensions. In DB schemes, low interest rates increase the (market) value of liabilities and put funding ratios under pressure. In DC schemes, the low interest rates decrease the expected return on retirement savings of citizens and, hence, reduce future replacement rates.

The past year long-term interest rates have risen from their ultra-low negative levels to over 2.5%. This has given IORPs and members and beneficiaries some reprieve with higher yields resulting in lower DB liabilities (when valued using market yields) and higher expected returns on DC assets. However, an important reason for the rising interest rates was the spike in inflation to well over 10%. High inflation worsens the financial situation of IORPs that provide inflation-linked pensions and, where IORPs do not, high inflation will deteriorate the purchasing power of (future) pensions. The specificities of IORPs across Member States, along with their assets allocations, will determine the potential impact of rising interest rates and high inflation.¹²

1.3.3. SUSTAINABILITY

Perhaps the greatest challenge of our time is climate change. A transition to a carbon-neutral society is essential to prevent further increases in global temperature levels and the associated detrimental impacts on ecosystems and human well-being. In the Paris agreement, countries have agreed to limit the temperature increase to 2°C and to pursue efforts to confine the temperature rise to 1.5°C compared to pre-industrial levels. The European climate law commits Member States to reduce net greenhouse gas emissions to zero, which is compatible with a maximum temperature rise of 1.5°C.

Global warming entails risks for IORPs through investments in companies and real estate in areas vulnerable to physical risks, such as flooding or forest fires. In addition, the transition to a climate-neutral economy, especially when it is late and abrupt, can lead to a fall in the value of investments

¹¹ [European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, Devnani, S., Pate, L., Muller, P., et al., Best practices and performance of auto-enrolment mechanisms for pension savings: final report, Publications Office, 2021.](#)

¹² See section 4 ('Inflation in scheme design and investment strategy – Qualitative survey') in [EIOPA, Report on the 2022 IORP Climate Stress Test, EIOPA-BoS-22/551, 13 December 2022.](#)

in carbon-intensive sectors.¹³ At the same time, IORPs through their long-term investment horizon are able to contribute to the transition to a carbon-neutral economy through their investments and engagement with companies.

Retail financial institutions providing services to individuals can offer their clients investment products with a variety of sustainability features. In some Member States, IORPs also provide participants with a number of options with different investment profiles, but in others it is more common for IORPs to have one collective investment policy for all participants, who are likely to have different sustainability preferences. The sustainability preferences of the participants may not always be easy to determine. But where they can be determined they should take priority in case they differ from the IORP's own sustainability preferences. Nevertheless, IORPs should not take the membership preferences as instruction, but rather as a key input into an investment strategy that should be consistent with the prudent person rule.

1.3.4. DIVERSITY AND INCLUSION

A sustainable society goes beyond combating climate change. In 2015, the United Nations (UN) adopted the sustainable development agenda for 2030 with 17 environmental and socio-economic goals, such as combating poverty and promoting gender neutrality.¹⁴

Diversity and inclusion are relevant for IORPs at different levels:

- ▶ the gender diversity of those who run the IORPs and gender neutral remuneration;
- ▶ diversity and inclusion issues in relation to their investments, e.g. to what extent investee companies take active steps on topics such as commitment to reducing the gender pay gap;
- ▶ the extent to which pension schemes provided by IORPs consider the impact on diversity and inclusion issues, e.g. scheme rules in areas such as part time working and discontinuous service.

The IORP II Directive was ground-breaking in that it was the first European prudential regulation to include provisions on environmental, social and governance (ESG) factors and risks. By now, most financial institutions, including insurance undertakings under Solvency II, are required not only to manage sustainability risks, but also to consider the long-term impact of investment policies on sustainability factors (the so-called 'double materiality'). Moreover, in relation to banking, the

¹³ [EIOPA, Report on the 2022 IORP Climate Stress Test, EIOPA-BoS-22/551, 13 December 2022.](#)

¹⁴ [United Nations, Transforming our world: the 2030 agenda for sustainable development, A/RES/70/1, 2015.](#)

Directive 2013/36/EU¹⁵ (Capital Requirements Directive; hereafter CRD) introduced requirements to enhance diversity and inclusion in management boards as well as gender neutral remuneration.

1.4. APPROACH TO ADVICE

EIOPA recognises the essential role of IORPs in providing adequate and sustainable pensions, reducing pension gaps and preventing old-age poverty, now and in the future. In addition, as long-term institutional investors, IORPs are an important source of capital for the European economy to finance inclusive and sustainable growth.

1.4.1. EMBRACING THE FUTURE

To continue playing this important role, the regulatory framework for IORPs must remain relevant and therefore embrace the future:

- ▶ Due to the shift from DB to DC, members and beneficiaries will bear more risk and choice. This increases the importance of understandable information on the relationship between contributions, investment returns and expected retirement benefits, as well as the costs and charges being deducted over the years. Moreover, members and beneficiaries need clear insight on the nature of the financial risks, as it relates to future retirement benefits and variable benefits already in payment. Where choices about benefits or investments are offered, IORPs need to offer adequate guidance to DC members, considering consumer behaviour and biases as well as the way the information is presented in a digital environment and in particular the choice architecture. In addition, IORPs will have to ensure the suitability of pension schemes by requiring IORPs to consider the risk tolerance and other relevant characteristics of the pool of pension scheme members, similar to the product oversight and governance (POG) rules that are already present in various other EU Directives, which also require relevant expertise for managing the scheme;
- ▶ Limiting global temperature increases to 1.5°C is a major challenge for today's society. Managing the transition to a carbon-neutral economy requires large sums of additional investments.¹⁶ IORPs have a very long-term investment horizon and are a major source of finance for the European economy, being able to channel pension savings to sustainable investments. The consideration of the long-term impact of investment decisions on climate change will benefit IORPs, by contributing to the reduction of physical and transition risks, to which the IORPs'

¹⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions.

¹⁶ [European Commission, Strategy for Financing the Transition to a Sustainable Economy, 6 July 2021.](#)

investments are exposed, as well as members and beneficiaries. Not only through the mitigation of climate risks in investment portfolios, but also because it contributes to a habitable planet when future retirement benefits are paid out;

- ▶ A sustainable society entails more than preventing the damaging effects of climate change, as witnessed by the UN's sustainable development agenda for 2030. IORPs are "institutions with a social purpose that provide financial services"¹⁷ and should be expected to reflect the society, or at least the sector, in which they operate. As such, IORPs should not only consider the impact of their investment decisions on the environment, but also on socio-economic factors, like diversity and inclusion. IORPs should also consider diversity and inclusion in the design of pension plans provided as well as in their own system of governance, also to facilitate independent opinions and critical challenge and to mitigate biased decision-making.

1.4.2. PROTECTING THE LEGACY

The shift from DB to DC does not mean that regulation and supervision of DB IORPs should be ignored, considering that some Member States are still largely DB countries and that a substantial number of members and beneficiaries will continue to be part of DB schemes for the foreseeable future.

The implementation of EIOPA's opinion to the EU institutions on a common framework for risk assessment and transparency will foster a market-consistent and risk-based assessment of the financial position of IORPs.¹⁸ A better understanding of the risks and vulnerabilities of DB IORPs contributes to their resilience and sustainability and enhances the protection of members and beneficiaries. A common approach to valuing assets and liabilities and measuring risks will also improve the functioning of the internal market by enhancing supervisory coordination and contributing to identifying and preventing regulatory arbitrage.

There is not only a need to monitor solvency risk, but also liquidity risks. As the UK events of 2022 have made clear, IORPs with material derivative exposures, together with the relevant national competent authorities (NCAs), need to properly assess and manage liquidity risk relating to derivative hedging positions.

1.4.3. PROPORTIONALITY AND MINIMUM HARMONISATION

EIOPA recognises the heterogeneity of pension systems across the EU and the variety of IORPs within national pension sectors. Therefore, EIOPA's advice aims to strike a proper balance between further convergence to meet future challenges and preserving the minimum harmonisation

¹⁷ Recital (32) of the IORP II Directive.

¹⁸ [EIOPA, Opinion to EU institutions on a common framework for risk assessment and transparency for IORPs, EIOPA-BoS-16/075, 14 April 2016.](#)

character of the IORP II Directive. In addition, in line with the advice of the EIOPA Advisory Committee on Proportionality (ACP)¹⁹, EIOPA carried out a mapping of the implementation of proportionality at national level. Taking into account the findings, the advice contains proposals to enhance proportionality with regard the current IORP II standards and considers proportionality in the recommendations for new standards.

1.5. BASIS FOR ADVICE

The IORP II Directive had to be transposed into national law by 13 January 2019. However, several Member States were late with the transposition. In two countries, the new IORP II rules will not go into effect until 1 January 2023 and several others are still in the process of preparing secondary legislation and supervisory guidance. Therefore, it is too early to provide a long-term assessment of the effectiveness of the IORP II Directive.

The advice is based on the need to meet future challenges, and where possible, the need for improvements to the existing framework that is already visible. In order to collect information for its advice EIOPA has carried out a comprehensive survey among NCAs, covering all six areas mentioned in the CfA. EIOPA has received responses from 27 NCAs from 26 EEA countries (European Economic Area).²⁰

EIOPA also bases its advice on its previous work, in particular a series of decisions, opinions and reports that EIOPA has issued since the adoption of the IORP II Directive, including:

- ▶ Two decisions of EIOPA's Board of Supervisors on regular information requests towards NCAs regarding the provision of occupational pensions information²¹ as well as the collaboration of the NCAs regarding the application of the IORP II Directive²²;
- ▶ Six opinions on the application of the IORP II Directive in relation to governance documents²³, the practical implementation of the common framework²⁴, operational risk management²⁵, the

¹⁹ [EIOPA ACP, Advice to EIOPA on proportionality areas in AWP 2022, EIOPA-BoS-21/405, 7 September 2021.](#)

²⁰ AT, BE, BG, CY, CZ, DE, DK, ES, FI, FR, GR, HR, IE, IT, LI, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI and SK.

²¹ [EIOPA, BoS Decision on regular information requests towards NCAs regarding the provision of occupational pensions information, EIOPA-BoS-20/362, 2 June 2020.](#)

²² [EIOPA, BoS Decision on the collaboration of NCAs regarding the application of the IORP II Directive, EIOPA-BoS-18/320, 27 September 2018.](#)

²³ [EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19-245, 10 July 2019.](#)

²⁴ [EIOPA, Opinion on the practical implementation of the common framework for risk assessment and transparency for IORPs, EIOPA-BoS-19-246, 10 July 2019.](#)

²⁵ [EIOPA, Opinion on the supervision of the management of operational risks faced by IORPs, EIOPA-BoS-19-247, 10 July 2019.](#)

management of ESG risks²⁶, long-term DC risk assessment²⁷ and the reporting of costs and charges²⁸;

- ▶ Two reports with guidance and principles based on current practices in relation to the PBS²⁹ and other information documents³⁰ as well as two model PBSs³¹.

1.6. ENGAGEMENT WITH STAKEHOLDERS

EIOPA carried out a public consultation on the draft advice between 3 March and 25 May 2023. Towards the end of the consultation period, on 11 May, EIOPA held a stakeholder event to discuss the draft technical advice.

A total of 48 stakeholders, including EIOPA's Occupational Pensions Stakeholder Group (OPSG), provided their response to the consultation paper, of which 39 are public and 9 confidential. A feedback statement on the comments received during the consultation is published alongside the technical advice as well as a table with resolutions on all individual, non-confidential responses.

EIOPA would like to express its appreciation for the comments and engagement of the stakeholders during the preparation of the technical advice.

1.7. STRUCTURE OF THE ADVICE

The main sections of this advice follow the sequencing of the CfA:

- ▶ Governance and prudential standards (chapter 2);
- ▶ Cross-border activities and transfers (chapter 3);
- ▶ Information to members and beneficiaries and other business conduct requirements (chapter 4);

²⁶ [EIOPA, Opinion on the supervision of the management of environmental, social and governance risks faced by IORPs, EIOPA-BoS-19-248, 10 July 2019.](#)

²⁷ [EIOPA, Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes, EIOPA-BoS-21/429, 7 October 2021.](#)

²⁸ [EIOPA, Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/426, 7 October 2021.](#)

²⁹ [EIOPA, Report on the pension benefit statement: guidance and principles based on current practices, November 2018.](#)

³⁰ [EIOPA, Report on other information to be provided to prospective and current members: guidance and principles based on current practices, March 2019.](#)

³¹ [EIOPA, Model Pension Benefit Statements, 20 February 2020.](#)

- ▶ Shift from defined benefit to defined contributions (chapter 5);
- ▶ Sustainability (chapter 6);
- ▶ Diversity and inclusion (chapter 7).

The discussion of the policy options in the various chapters has a common structure:

- ▶ Extract from the CfA;
- ▶ Relevant legal provisions, previous EIOPA reports and other regulatory background;
- ▶ Identification of the issue;
- ▶ Analysis of the options and impact assessment, assessing the costs and benefits for members, IORPs, NCAs and other stakeholders;
- ▶ EIOPA's advice in the blue box.

2. GOVERNANCE AND PRUDENTIAL STANDARDS

2.1. EXTRACT FROM THE CALL FOR ADVICE

With a view to assisting the Commission in the preparation of its review of the IORP II Directive, EIOPA is invited to provide advice covering the following area:

1. *An evaluation of the implementation and effectiveness of the IORP II Directive in the areas set out in Article 62 of the Directive, including:*
 - a. *The adequacy of the Directive from a prudential and governance point of view and the Directive's impact on the stability of different types of IORP. The prudential and governance minimum standards laid down in the IORP II Directive are intended to guarantee a high degree of security for all future pensioners and to clear the way for a sound, prudent and effective management of occupational pension schemes. However, 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. EIOPA should assess the implementation and the adequacy of these standards and the general impact of the Directive on the stability of IORPs. It should in 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. In this context, particular attention should be paid to the situation of pure Defined Contributions (DC) schemes which do not provide a guaranteed level of benefits.*

2.2. IMPLEMENTATION AND EFFECTIVENESS

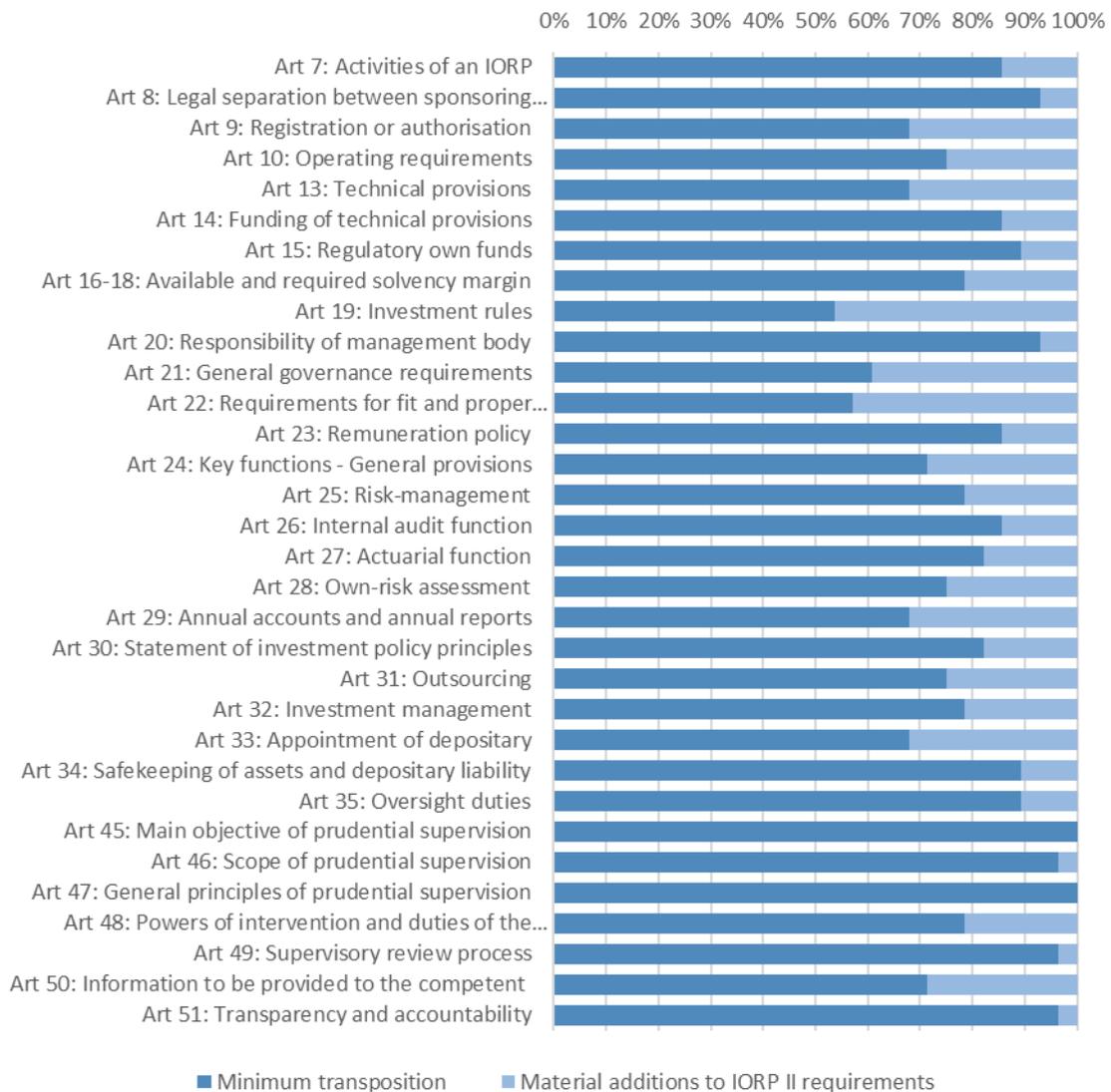
2.2.1. NATIONAL IMPLEMENTATION

EIOPA asked NCAs through the survey how the governance and prudential standards in the IORP II Directive have been implemented at national level. Member States had the choice to carry out a minimum transposition or supplement the IORP II standards with additional national requirements. These additional requirements can be set out in Level 1/primary legislation (e.g. Parliamentary Act), Level 2/secondary regulation and/or Level 3 measures issued by the NCA.

The degree to which the governance and prudential standards have been materially supplemented at national level ranges from 0-45% of Member States for each article (see Figure 2.1 below). The

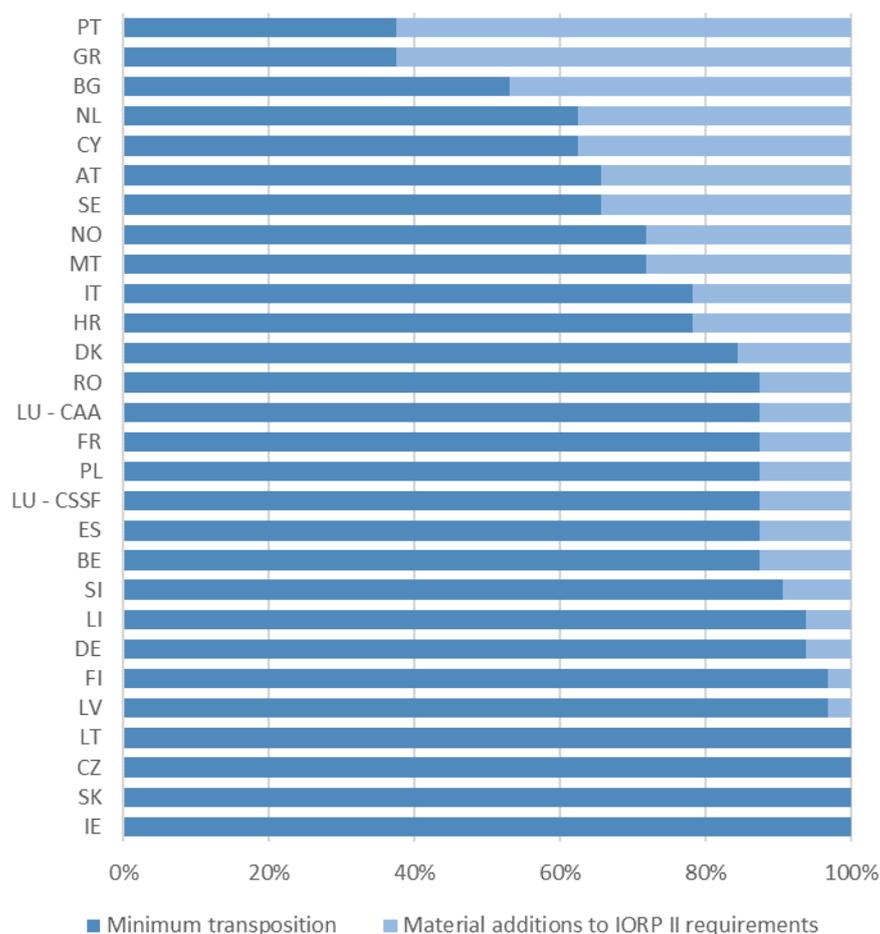
investment rules (Article 19) have been supplemented most often, followed by the requirements for fit and proper management (Article 22) and the general governance requirements (Article 21).

FIGURE 2.1: ADDITIONAL NATIONAL MEASURES BEYOND THE GOVERNANCE AND PRUDENTIAL REQUIREMENTS IN IORP II BY ARTICLE, % OF RESPONDING NCAS



The extent to which Member States supplemented the governance and prudential standards differs. For example, GR and PT supplemented more than 60% of the standards with national additions, while CZ, IE, LT and SK³² did a full minimum transposition (see Figure 2.2 below).

FIGURE 2.2: ADDITIONAL NATIONAL MEASURES BEYOND THE GOVERNANCE AND PRUDENTIAL REQUIREMENTS IN IORP II BY MEMBER STATE, % OF IORP II ARTICLES



Ten NCAs (AT, BG, CY, GR, HR, MT, PT, RO, SE, SI) indicated that other national governance and prudential requirements were implemented, which cannot be directly linked to the IORP II standards. These concern additional rules in relation to fit and proper requirements for qualified shareholders (BG), various governance and prudential requirements, such as provisions relating to

³² The NCA in SK indicated that national regulation is often more detailed than the corresponding IORP II standards, but that these more detailed rules were implemented before the introduction of IORP II and, hence, were not covered in its answer.

anti-discrimination on the ground of gender, revocation of registrations and the manner and timing of contribution payments (CY), costs that can be paid directly from the pension fund's assets (HR), the corporate governance code (MT), additional pension funds' governance structures, such as appointed actuaries and pension plan monitoring committees (PT), group requirements relating to governance, reporting and solvency (SE) and the requirement for a compliance function (SI).

2.2.2. MEMBER STATE OPTIONS

Several of the governance and prudential provisions in IORP II contain Member State options. NCAs were asked through the survey which option was selected in their Member State.

Some Member States apply the asset diversification requirement (Article 19(1)(f))³³ and the concentration limit in sponsor assets (Article 19(1)(g))³⁴ to government bonds and other Member States do not. In HR, the asset diversification requirement is applied to pension insurance companies (DB), but not to closed-ended voluntary pensions funds (DC). In PL, IORPs' assets may not be invested in securities issued by the society managing this IORP. In SK, there are only MIPs, so there is no relationship between the sponsoring undertaking and the pension management companies.

Five Member States allow only 1 person effectively running the IORP (Article 21(6)).³⁵ In HR, only 1 person is allowed for closed-ended voluntary pension funds (DC), but not for pension insurance companies (DB). In ES, the management body should consist of at least 3 persons.

Five Member States do not allow the person/unit carrying out a key function to be the same as in the sponsoring undertaking (Article 24(3)).³⁶

- ▶ In FR, where the person carrying out a key function holds an activity in an undertaking or association which has concluded a contract with the IORP, this activity cannot have a connection either with the concluding contracts with the IORP or with their technical and financial follow-up. The written risk management and internal control policies shall describe how this risk of conflict of interest is prevented and controlled.

³³ 15 Member States (AT, BE, DE, DK, FI, FR, GR, IT, LU, LV, NO, PT, SE, SI, SK) apply the asset diversification requirement to government bonds, 8 Member States (BG, CY, CZ, ES, IE, LI, NL, RO) do not and NCAs from 3 Member States (HR, MT, PL) replied 'other'.

³⁴ 11 Member States (BE, DE, DK, FI, FR, GR, IT, LU, NO, PT, RO) apply the concentration limit in sponsor assets to government bonds, 13 Member States (AT, BG, CY, CZ, ES, HR, IE, LI, LV, MT, NL, SE, SI) do not and NCAs from 2 Member States (PL, SK) replied 'other'.

³⁵ 5 Member States (GR, IT, LI, NO, PT) allow only 1 person effectively running the IORP, 19 Member States (AT, BE, BG, CY, CZ, DE, DK, FI, FR, IE, LU, LV, MT, NL, PL, RO, SE, SI, SK) do not and NCAs from 2 Member States (ES, HR) replied 'other'.

³⁶ 18 Member States (AT, BE, CY, DE, DK, ES, FI, GR, HR, IE, LI, LU, LV, IT, NO, PL, PT, SE) allow the person/unit carrying out a key function to be the same as in the sponsoring undertaking, 5 Member States (BG, CZ, MT, RO, SI) do not and NCAs from 3 Member States (FR, NL, SK) replied 'other'.

- ▶ In NL, although national law does not specifically prohibit that the same person/unit as in the sponsoring undertaking is carrying out the key function of the IORP, in most cases outsourcing of the key function, with the exception of the actuarial function, is not allowed.
- ▶ In SK, there are only MIPs, so there is no relationship between the sponsoring undertaking and the pension management companies (IORPs).

In nearly all Member States outsourcing (Article 31(1))³⁷ is permitted, but in one Member State (RO) outsourcing is prohibited. In BG, outsourcing is allowed except for investment of the pension fund's assets, benefit payments and the carrying out of the key functions, while in CZ outsourcing is not regulated.

More than half of Member States require the appointment of one or more depositaries, both where members and beneficiaries fully bear (Article 33(1))³⁸ and not fully bear (Article 33(2))³⁹ the investment risk. In BG and PL, IORPs only provide DC schemes and a depositary is mandatory, whereas Article 33(2) is not applicable. In ES, the depositary is mandatory and should be located within its borders. In HR, only closed-ended voluntary pensions funds (DC) are required to have a depositary, but not pension insurance companies (DB). In PT, the appointment of one or more depositaries is required for all IORPs, regardless of who bears the risk, but in Article 33(1) only from the home Member State perspective (first part) and not the host Member State perspective (second part). In SI, all IORPs provide guarantees on investment returns and a depositary is mandatory, whereas Article 33(1) is not applicable.

2.2.3. ASSESSMENT OF STABILITY AND ADEQUACY

EIOPA is asked to assess the impact of the IORP II Directive from a governance and prudential point of view on the stability of different types of IORP.

Around half of NCAs experienced or expected a positive contribution of the governance and prudential requirements on the stability of IORPs. The new requirements did not only contribute to the stability of IORPs, e.g. through better risk awareness and controls, but according to a couple of NCAs also to enhancing the protection of members and beneficiaries.

Two NCAs indicated that the impact would not be very significant or small. Some NCAs indicated that it was somewhat early to assess whether the new requirements made a positive contribution.

³⁷ 23 Member States (AT, BE, CY, DE, DK, ES, FI, FR, GR, HR, IE, IT, LI, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK) permit outsourcing by IORPs, 1 Member State (RO) prohibits outsourcing and NCAs of 2 Member States (BG, CZ) replied 'other'.

³⁸ 16 Member States (AT, BE, BG, ES, FI, FR, GR, HR, IT, LI, LV, LU, MT, PL, RO, SK) require the appointment of one or more depositaries, 8 Member States (CZ, DE, DK, CY, IE, NL, NO, SE) do not, an NCA from 1 Member State (PT) replied 'other' and an NCA from 1 Member State (SI) replied 'not applicable'.

³⁹ 14 Member States (AT, BE, ES, FR, GR, IT, LI, LU, LV, MT, PT, RO, SI, SK) require the appointment of one or more depositaries, 10 Member States (CY, CZ, DE, DK, FI, HR, IE, NL, NO, SE) do not and NCAs from 2 Member States (BG, PL) replied 'not applicable'.

In IE and NO the new requirements will not be fully implemented until 2023. One NCA argued that it is difficult to measure the impact of the new requirements. A handful of NCAs indicated that many or most of the governance and prudential requirements were already in place before IORP II. As such, the impact was limited in those Member States and/or the new IORP II requirements built on existing ones.

Specific areas mentioned with a positive impact on the stability of IORPs are: fit and proper requirements, system of governance, internal control, key functions, outsourcing of key functions, own risk assessment (ORA), remuneration policies, and the supervisory review process (SRP).

One NCA responded that the cost of complying with the enhanced governance requirements has resulted in consolidation of the national IORP sector. A large number of, mainly smaller, IORPs have terminated their activities, transferring their pension liabilities either (and mainly) to a multi-employer IORP or to an insurance undertaking.

Most NCAs indicated that the contribution to the stability of IORPs is not different for different types of IORPs. A number of NCAs responded that there is only one type of IORP in their Member State. One NCA reacted that financial stability is mostly an issue for DB schemes. A couple of NCAs indicated that IORPs do not exist in their Member State.

Adequacy

The prudential and governance minimum standards laid down in the IORP II Directive are – according to the COM's CfA – intended to guarantee a high degree of security for all future pensioners and to clear the way for a sound, prudent and effective management of occupational pension schemes. At the same time, the application of these standards must not lead to unduly burdensome requirements, taking into account the diversity in the size, nature, scale and complexity of the activities of IORPs within and across Member States.

Most NCAs indicated through the survey that the various governance and prudential requirements were either adequate by themselves or adequate as an EU minimum standard, allowing Member States flexibility to supplement them, taking into account the specificities of national IORP systems (see Figure 2.3 below).

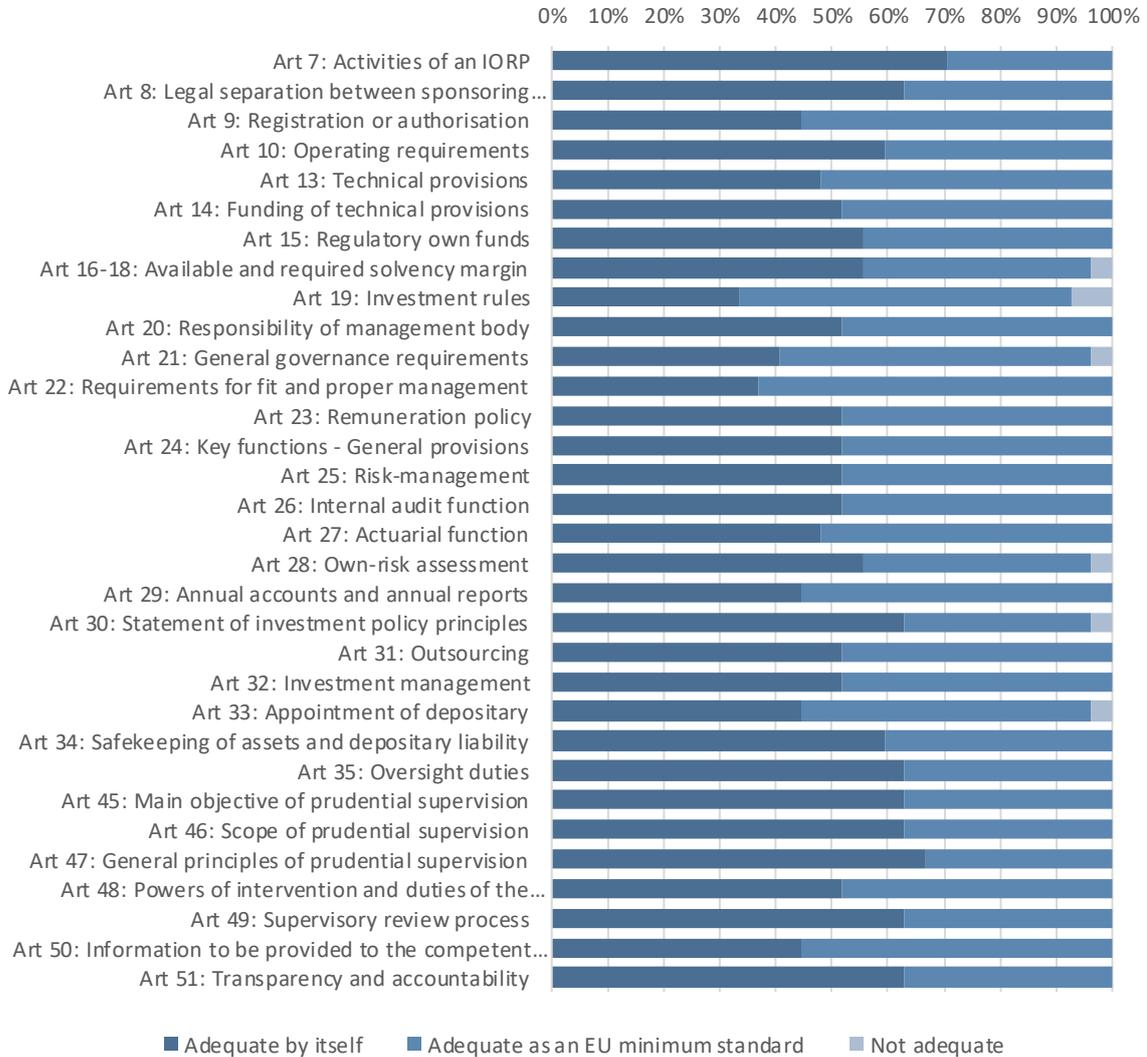
A couple of NCAs deemed some IORP II standards inadequate, in particular the:

- ▶ Available and required solvency margin (Article 16-18) because the IORP II Directive only contains a requirement depending on the volume of business (like 4% of mathematical provisions), but not a minimum capital requirement (like EUR 3.7 million);
- ▶ Investment rules (Article 19) because the concept of double materiality for sustainability is missing and, given the steady transition towards DC schemes, specific provisions on life-cycling and the members' risk appetite are not included;

- ▶ Governance requirements (Article 21) since the shift to DC could warrant more direct participation by DC members in the IORP's governance, especially where employers are not subject to additional funding obligations;
- ▶ Requirements on ORA (Article 28) and Statement of Investment Policy Principles (SIPP, Article 30), since these governance documents could be further enhanced using the description of the governance documents in EIOPA's Opinion on the use of governance and risk assessment documents in the supervision of IORPs;⁴⁰
- ▶ Provisions on the appointment of one or more depositaries (Article 33(1) and (2)) since these provisions only allow the host Member State to require the appointment of one or more depositaries where members and beneficiaries fully bear the investment risk.

⁴⁰ [EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19-245, 10 July 2019.](#)

FIGURE 2.3: NCAS' ASSESSMENT OF THE ADEQUACY OF THE GOVERNANCE AND PRUDENTIAL REQUIREMENTS IN IORP II



2.3. PROPORTIONALITY

2.3.1. RELEVANT LEGAL PROVISIONS

Article 5 of the IORP II Directive provides that Member States may choose not to apply the Directive, in whole or in part and with the exception of Articles 32-35, to IORPs which have less than 100 members in total. Member States shall apply Article 19(1) and Article 21(1) and (2) to any IORP registered or authorised in their territories which operates pension schemes which together have more than 15 members in total.

Several articles and recitals in the IORP II Directive specify that the relevant IORP II provisions should be applied in a proportionate manner, i.e. proportionate to the size and internal organisation of IORPs and/or the size, nature, scale and complexity of (the risks inherent in) the activities of the IORP.⁴¹

Article 2(7) of the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector⁴² (SFDR) excludes from its scope institutions in respect of which a Member State has chosen to apply Article 5 of the IORP II Directive or an institution that operates pension schemes which together have less than 15 members in total.

Article 2(3)(c) of Regulation (EU) 2022/2554 on digital operational resilience for the financial sector⁴³ (DORA) excludes from its scope IORPs which operate pension schemes which together do not have more than 15 members in total. Article 16 of that Regulation provides that Articles 5 to 15 do not apply to small IORPs, but that small IORPs should be subject to a simplified ICT risk management framework. According to Article 26(1), small IORPs do not have to carry out advanced testing by means of threat-led penetration testing (TLPT) and, according to Article 28(2), small IORPs do not have to adopt, and regularly review, a strategy on ICT third-party risk. Article 3(53) defines a small IORP as an IORP which operates pension schemes which together have less than 100 members in total.⁴⁴

According to paragraph 1.15 of the EIOPA's BoS Decision on regular information requests towards NCAs regarding the provision of occupational pensions information⁴⁵, NCAs may exempt from the full set of reporting the smallest IORPs in the corresponding Member State if the total assets are less than EUR 25 million or the number of its members including beneficiaries is fewer than 100, until 20% (25% until 2022) of the sector, in terms of balance sheet total, is reached. In the revised

⁴¹ Article 19(2) on NCAs' monitoring of IORPs' credit assessment process, Article 21(2) on system of governance, Article 21(6) on the NCA assessment of one person effectively running the IORP, Article 23(1) on remuneration policy, Article 24(3) on carrying out key functions through the same single person or organisational unit as in the sponsoring undertaking, Article 25(1) on the risk-management function, Article 25(2) on the risk-management system, Article 26 on the internal audit function, Article 28(1) on the carrying out and documentation of the own-risk assessment, Article 28(2) on the content of the own-risk assessment, Article 28(3) on the methods of the own-risk assessment, Article 47 on the application of supervisory powers, Article 49(1) on the application of the supervisory review process and Article 49(4) on the scope and frequency of the supervisory review process as well as Recital (54) on key functions, Recital 40 on the actuarial functions and Recital (58) on the consideration of ESG factors in the investment approach and related information provision.

⁴² [Regulation \(EU\) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector.](#)

⁴³ [Regulation \(EU\) 2022/2554 of 14 December 2022 on digital operational resilience for the financial sector.](#)

⁴⁴ Recital (42) clarifies that small IORPs refer to the IORPs which may be excluded from the scope of the IORP II Directive under the conditions laid down in Article 5 of that Directive by the Member State concerned and operate pension schemes which together do not have more than 100 members in total.

⁴⁵ [EIOPA, Decision of the Board of Supervisors on EIOPA's regular information requests towards NCAs regarding provision of occupational pensions information, EIOPA-BoS/20-362, 2 June 2020.](#)

decision⁴⁶, which will be applicable from 1 January 2025, NCAs may exempt from the full set of reporting the smallest IORPs if the total assets are less than EUR 50 million or the number of its members including beneficiaries is fewer than 100, until 20% of the sector, in terms of balance sheet total, is reached.

2.3.2. PREVIOUS EIOPA REPORTS

In the context of prudential regulation of insurance undertakings, Article 4 of the Solvency II Directive excludes from its scope undertakings which – among others – have gross written premium income not exceeding EUR 5 million and technical provisions not exceeding EUR 25 million. In its Opinion on the 2020 review of Solvency II⁴⁷, EIOPA recommended to double the technical provisions threshold (i.e. to EUR 50 million) and to turn the gross written premium income threshold into a range from EUR 5 million to EUR 25 million. The latter allows Member States / NSAs (national supervisory authorities) to define their own thresholds for undertakings in the EUR 5-25 million range.

In its Opinion on the 2020 review of Solvency II, EIOPA also advises to define low-risk profile undertakings using objective/quantitative criteria. In relation to low-risk profile undertakings, EIOPA advises to relax some of the requirements, e.g. in relation to the valuation of options and guarantees, the capital requirement for immaterial risks, the combining of key functions (with operational functions), the own risk and solvency assessment (ORSA) being carried out every two years instead of annually, the non-application of the deferral requirement for the variable remuneration component, and a lower frequency of regular supervisory reporting.

Low-risk profile undertakings would have to notify the NSA, if they believe to comply with the criteria and should be classified as such. NSAs would have the possibility to challenge the low-risk profile classification as well as the use of proportionality measures, even if undertakings are considered to be low risk. Similarly, NSAs would be able to allow the use of proportionality measures if undertakings do not comply with (all of) the low-risk profile criteria. In the opinion, EIOPA also recommended that undertakings publicly report on the use of proportionality measures.

⁴⁶ [EIOPA, Decision of the Board of Supervisors on EIOPA's regular information requests regarding provision of occupational pensions information, EIOPA-BoS/23-030, 10 February 2023.](#)

⁴⁷ [EIOPA, Opinion on the 2020 Review of Solvency II, EIOPA-BoS-20/749, 17 December 2020.](#)

2.3.3. OTHER REGULATORY BACKGROUND

The ACP advised to conduct a mapping of the implementation of proportionality at national level and to consider the development of a set of criteria that could be used to measure proportionality as done for Solvency II, where criteria should take into account the specificities of IORPs.⁴⁸

2.3.4. IDENTIFICATION OF THE ISSUE

Many of the governance and prudential standards in the IORP II Directive should be applied in a proportionate manner. In addition, according to Article 47(2) of the IORP II Directive, supervision by NCAs should be based on a forward-looking and risk-based approach. This means that the intensity and scope of supervision should depend on the risk profile of the IORP, taking into account emerging risks that may materialise in the future.⁴⁹

Small IORP exemption

Article 5 of the IORP II Directive allows Member States to exempt IORPs with less than 100 members in total from all or part the provisions in the IORP II Directive with the exception of Articles 32 to 35. Six Member States (CY, DK, FI, GR, MT, SE) make use of Article 5, exempting small IORPs from all or part of the IORP II requirements (see Table 2.1 in Annex 2). Two Member States (IT, LV) use the provision to exempt small IORPs from certain national regulations, supplementing the IORP II Directive.

Although the provision is based on a size criterion, the small IORP exemption can still be considered risk-based. Member States may decide not to grant their small IORPs an exemption, if they consider that this is not appropriate in relation to the risk profile of their small IORPs. Moreover, small IORPs meeting the small IORP threshold and not being subjected to part of the provisions of the IORP II Directive in their Member State may still be subject to specific national regulation in these areas.

The threshold for the small IORP exemption is relatively low, i.e. 100 members, corresponding on average to about EUR 10 million in assets. By comparison, one threshold for small insurance undertakings to be exempted from Solvency II amounts to EUR 25 million in technical provisions and EIOPA advised to double that amount. The relatively low threshold implies that Member States have less flexibility to exempt certain IORPs, if they are considered to have a low-risk profile, resulting in disproportionate requirements. This is not only the case for the prudential and governance standards in IORP II, but also for the sustainability-related disclosure requirements in the SFDR and the non-simplified ICT risk management framework, advanced testing by means of

⁴⁸ [ACP, Advice to EIOPA on proportionality areas in AWP 2022, EIOPA-BoS-21-405, 7 September 2021.](#)

⁴⁹ See [EIOPA, A common supervisory culture – Key characteristics of high-quality and effective supervision, 2017.](#)

TLPT and the adoption and review of a strategy on ICT third-party risk in the DORA.

Risk-based proportionality requirements

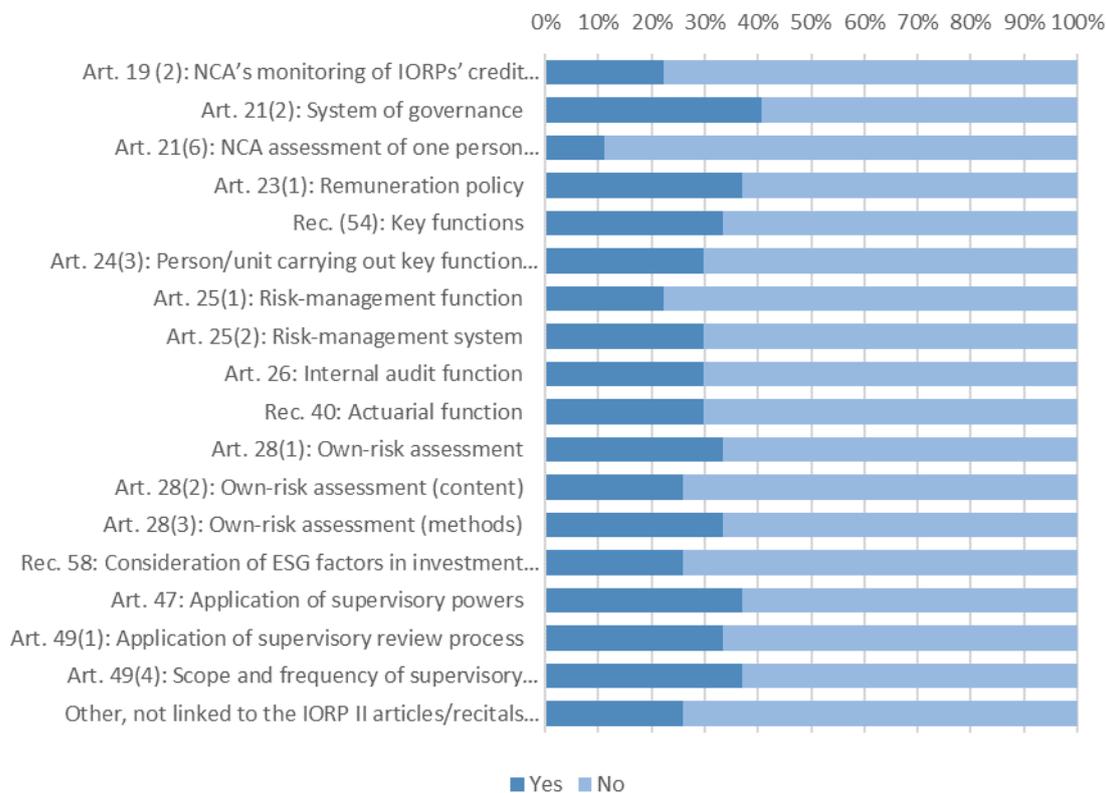
The IORP II Directive envisages that many of the governance and prudential requirements are applied in a proportionate way. To that end, the Directive often uses the formulation that the requirements should be imposed in a manner that is proportionate to the size and internal organisation of IORPs as well as to the size, nature, scale and complexities of their activities.

The 'size' criterion seems to contradict the principle of risk-based regulation and supervision. Although small IORPs are more likely to have a low risk profile, this is not necessarily the case. The activities and products provided by small IORPs may be complex and risky, jeopardising the protection of members and beneficiaries. Similarly, the IORP's 'internal organisation' should be aligned with its risk profile, rather than the risk profile following from the internal organisation. Finally, there does not seem to be a meaningful distinction between the 'size' and the 'scale' of activities.

Proportionate application of IORP II requirements to low risk IORPs

The proportionality requirements relating to the specific provisions of the IORP II Directive have been implemented in 20-40% of Member States (see Figure 2.4). An exception is the NCA's assessment of one person effectively running the IORP (Article 21(6)), for which only 10% of NCAs indicated that proportionality measures are implemented. As indicated in section 2.2.2, only five Member States allow IORPs being run by only one person. A quarter of Member States have 'other' proportionality measures in place, such as less stringent national governance requirements for small IORPs (PT, SE) or for single-employer IORPs as opposed to multi-employer IORPs (AT).

FIGURE 2.4: IMPLEMENTATION OF PROPORTIONALITY MEASURES AT NATIONAL LEVEL FOR RELEVANT IORP II PROVISIONS BY PROVISION, % OF RESPONDING NCAS



The implementation of the proportionality measures is not uniformly distributed across the EU Member States:

- ▶ Nine Member States (BE, CY, DE, FI, FR, GR, LV, PL, SI) implemented the proportionality measures to 50% or more of the relevant provisions of the IORP II Directive, often by using formulations similar to the proportionality provisions in the IORP II Directive;
- ▶ Seven Member States (AT, BG, ES, HR, NO, PT, SE) implemented the proportionality measures to 5% to 30% of the relevant provisions of the IORP II Directive, sometimes specifying that supervisory reviews and powers are implemented in a proportionate way (BG, ES, PT) or implementing one proportionality provision for all governance requirements (SE);
- ▶ Ten Member States (CZ, DK, IE, IT, LI, LU, MT, NL, RO, SK) have not implemented proportionality measures for any of the provisions of the IORP II Directive.

The absence of specific proportionality measures in national regulation does not necessarily mean that the relevant provisions of the IORP II Directive are not applied in a manner that is proportionate

to the risk profile of the IORPs. In many Member States, NCAs strive for proportionate supervision by taking a risk-based and forward-looking approach.

Eleven NCAs indicate that one or more objective criteria or quantitative thresholds are defined in their Member State. This mostly relates to criteria and thresholds defined within NCAs to ensure a proportionate approach to supervision (see Figure 2.5). Only two NCAs (CY, FI) indicate a quantitative size threshold in national regulation. In CY, IORPs with less than 15 members and less than half a million in AuM are exempted from the obligation to submit a SIPP and IORPs with less than 100 members can make use of transitional measures. In FI, the quantitative threshold also concerns the small IORP threshold of 100 members.

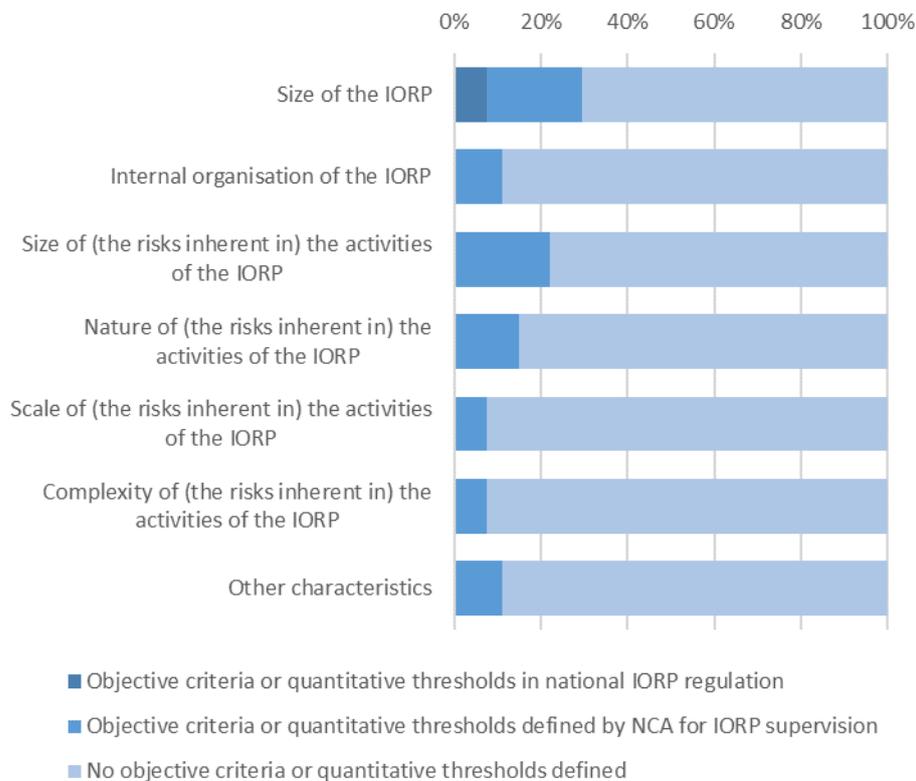
Objective criteria or quantitative thresholds that were mentioned by these NCAs include:

- ▶ For size: AuM, market share, required (not actual) staff, members (<100);
- ▶ For internal organisation: degree of outsourcing, number of staff, hierarchy, structure of processes;
- ▶ For size of (the risks inherent in) activities: assets-liabilities, balance sheet total, guarantees, solvency requirement;
- ▶ Nature of (the risks inherent in) activities: solvency requirement, multi-employer IORP or not, fully reinsured or not;
- ▶ Other characteristics: open vs closed IORPs, solvency requirement.

NCAs were asked through the survey to provide an assessment of the advantages and disadvantages of using objective criteria and quantitative thresholds to apply a proportionate approach to the regulation and supervision of IORPs.

Some NCAs indicated that objective criteria / quantitative thresholds have advantages by encouraging a uniform approach, legal certainty and predictability for IORPs. In particular, they are beneficial for diverse and large IORP sectors, providing NCAs with first guidance on the risk profile of IORPs. A disadvantage is that it is hard to achieve appropriate and comprehensive criteria/thresholds to establish the risk profile of IORPs. There is the danger of inadvertently classifying IORPs as low risk and there is the problem of borderline cases (just above / below a threshold). Another issue is that a system of quantitative criteria/thresholds is quite rigid, limiting the flexibility of NCAs to apply a proportionate approach to supervision. Ideally, quantitative criteria/thresholds should be supplemented with further qualitative criteria and expert judgement by the NCA. The use of criteria or thresholds may also disincentivise consolidation of the IORP sector and the accompanying economies of scale.

FIGURE 2.5: OBJECTIVE CRITERIA OR QUANTITATIVE THRESHOLDS FOR PROPORTIONALITY DEFINED AT NATIONAL LEVEL BY IORP CHARACTERISTIC, % RESPONDING NCAS



Even where NCAs apply a proportionate approach to supervision, IORPs with low-risk profiles may be confronted with disproportionate requirements:

- ▶ One potential reason would be that NCAs are restricted by the minimum requirements of the IORP II Directive. I.e. an IORP II minimum standard would be considered disproportionate for low risk IORPs, but the NCA would not be able to deviate from that minimum without breaking EU law. Article 5 allows Member States to exempt small IORPs from most IORP II requirements, but not all low-risk profile IORPs are necessarily small IORPs.
- ▶ Another potential reason would be that NCAs are restricted by national regulation, which may be more onerous than the minimum requirements laid down in the IORP II Directive. In other words, a national standard could be considered disproportionate, but the NCA would not be able to deviate from that standard, even if the IORP II Directive would allow for a less onerous standard.

IORPs may also be confronted with disproportionate requirements because NCAs are reluctant to apply less onerous requirements to low risk IORPs, even if this is possible within national and EU regulation.

2.3.5. ANALYSIS

To address the identified issues with regard to proportionality, options are analysed in three areas:

- ▶ Small IORP exemption in Article 5;
- ▶ Risk-based proportionality formulations;
- ▶ Definition of low-risk profile IORPs.

Small IORP exemption

Policy options

Four options are considered for the small IORP exemption: the no change option and three options to increase the current threshold to different extents and excluding or including a grandfathering clause. In all options the thresholds are absolute, i.e. independent of the proportion of IORPs in a given Member State that would fall below the threshold. While relative thresholds could be a good solution tailored to the needs of both small and large IORP markets, such solutions are not considered here for internal market reasons. IORPs would be treated differently depending on the characteristics of the IORP sector in the home Member State.

Option 0: No change

Option 1: Increase threshold to both 1000 members and beneficiaries and EUR 50 million in assets in total

Under this option, the threshold for the small IORP exemption would be increased from 'less than 100 members in total' to 'both less than 1000 members and beneficiaries and less than EUR 50 million in assets in total'. A number of members and beneficiaries of 1000 corresponds on average to almost EUR 75 million in assets for EU IORPs based on end-2021 data. This means that for an average IORP the EUR 50 million part of the threshold will be binding. However, for recently established IORPs with many members, but little accumulated assets, the 1000 members part of the threshold will be relevant.

EIOPA receives individual data for 668 IORPs out of around 1,500 IORPs⁵⁰. Of these 668 IORPs, 112 IORPs (17%, 0.6% of assets and 0.3% of members and beneficiaries) fall below the current small

⁵⁰ Excluding IORPs from CY, GR and IE from which EIOPA does not receive regular data.

IORP threshold of 100 members (see Figure 2.6A). If the threshold is widened to both less than 1000 members and beneficiaries in total and less than EUR 50 million in assets, the number of IORPs below the threshold increases with 76 to 186 IORPs (28%, 0.1% of assets and 0.1% of members and beneficiaries). 18 IORPs (five from FI, four from DK, three from DE, three from SK and one from HR, NL and PT) that are below the current threshold will no longer meet the new threshold because their assets exceed EUR 50 million or because they have many beneficiaries in comparison to active and deferred members.

Six NCAs (BE, DE, ES, IT, MT, NO) predominantly submit aggregate data to EIOPA. This means that it is not possible to establish the number of IORPs that fall below the current and proposed new threshold. However, out of the 912 IORPs in these six countries, 310 IORPs (34%) have assets below EUR 25 million and 208 IORPs (23%) have assets between EUR 25 million and EUR 100 million (see Figure 2.6B).

FIGURE 2.6A: NUMBER OF IORPS FOR WHICH EIOPA RECEIVES INDIVIDUAL DATA BELOW THE CURRENT SMALL IORP THRESHOLD AND THE THRESHOLD UNDER OPTION 1, 2 AND 3

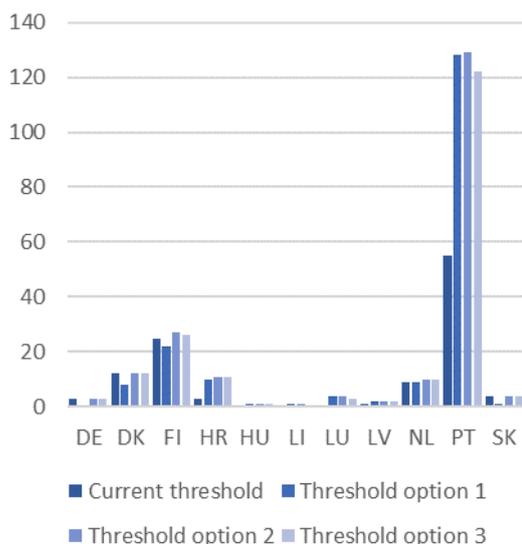
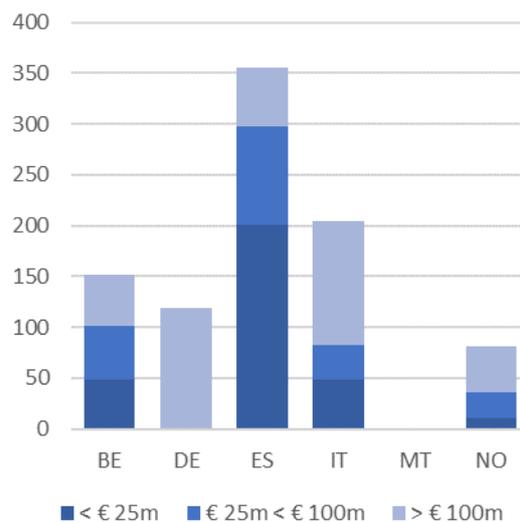


FIGURE 2.6B: NUMBER OF IORPS BROKEN DOWN BY AMOUNT OF ASSETS BASED ON AGGREGATE DATA RECEIVED BY EIOPA



Combining these individual and aggregate results allows for the conclusion that 31%⁵¹ to 45%⁵² of IORPs (excluding those in CY, GR and IE) would fall within the small IORP threshold proposed under this option.

The increase in the threshold will not only provide Member States more leeway to exempt IORPs from certain requirements in the IORP II Directive, but also to exempt them from the requirements in the SFDR. Whereas the SFDR links the exemption of IORPs to the application of Article 5 of the IORP II Directive, i.e. without explicitly mentioning the threshold, the DORA explicitly states that IORPs should have less than 100 members in order to make use of the simplified ICT risk management requirements. Under this option, the threshold in Article 3(53) of DORA would also be increased from 'less than 100 members in total' to 'both less than 1000 members and beneficiaries and less than EUR 50 million in assets in total'.

Option 2: Increase threshold to both 1000 members and beneficiaries and EUR 50 million in assets in total with grandfathering clause

Due to the inclusion of the assets and beneficiaries criteria in the threshold, the previous option would result in some IORPs with a low number of members and a high amount of assets and/or large number of beneficiaries not falling under the exemption anymore. To prevent that small IORPs that are currently making use of the small IORP exemption would no longer be able to do so under the new threshold, under this option the increase in the threshold is accompanied with a grandfathering clause. According to this grandfathering provision, Member States would have the possibility to continue to apply the old threshold to small IORPs that benefit from the small IORP exemption at the time of the entry into force of the new threshold. Once such IORPs do not meet the old threshold anymore, they would either have to meet the new threshold or they would not be eligible for the small IORP exemption anymore.

The grandfathering provision would imply that the 18 IORPs mentioned under option 1 – which meet the old threshold but not the new threshold – would potentially be able to use the small IORP exemption.⁵³ In consequence, the number of IORPs potentially meeting the new threshold would increase by 18 compared to option 1 to 204 IORPs out of the 668 IORPs (30%, 0.6% of assets, 0.4% of members and beneficiaries,) for which EIOPA receives individual data (see Figure 2.6A).

⁵¹ Assuming that 28% of IORPs for which individual data are available and 34% of IORPs for which no individual data are available fall within the threshold.

⁵² Assuming that 28% of IORPs for which individual data are available and 57% (=34% + 23%) of IORPs for which no individual data are available fall within the threshold.

⁵³ "Potentially" because it would be at the discretion of the Member States to apply the grandfathering clause. In addition, only the 9 IORPs from DK and FI are currently using the small IORP exemption. The remaining 9 IORPs from DE, HR, NL, PT and SK would not be able to make use of the grandfathering provision if their Member States continue not to apply the small IORP exemption until the entry into force of the new threshold.

In total, combining the available individual and aggregate data, the percentage of IORPs falling within the small IORP threshold will remain in a similar range of 33%⁵⁴ to 46%⁵⁵ of IORPs (excluding those in CY, GR and IE).

Like in option 1, under this option, the threshold in Article 3(53) of DORA would also be increased to 'both less than 1000 members and beneficiaries and less than EUR 50 million in assets in total'. Again, the threshold in the SFDR is already directly linked to the application of Article 5 of the IORP II Directive.

Option 3: Increase threshold to both 1000 members and beneficiaries and EUR 25 million in assets in total with grandfathering clause

The previous option 2 implies that up to 46% of IORPs (excluding those in CY, GR and IE) would potentially meet the threshold for the small IORP exemption. Even though expressed as a percentage of assets or members and beneficiaries the figures would likely be below 1%, this option considers a lower threshold by reducing the asset condition from EUR 50 million to EUR 25 million relative to option 2.

The members-and-beneficiaries condition (less than 1000) stays the same as in option 2 and also the grandfathering clause is included. Accordingly, Member States would have the possibility to continue to apply the old threshold to small IORPs that benefit from the small IORP exemption at the time of the entry into force of the new threshold. Once such IORPs do not meet the old threshold anymore, they would either have to meet the new threshold or they would not be eligible for the small IORP exemption anymore.

The reduction of the asset condition to EUR 25 million would mean that the number of IORPs potentially meeting the new threshold would decrease by 10 compared to option 2 to 194 IORPs out of the 668 IORPs (29%, 0.6% of assets, 0.4% of members and beneficiaries) for which EIOPA receives individual data (see Figure 2.6A).

Even though the number of IORPs – for which individual data are available – meeting the threshold decreases by only 10, the new asset condition allows for a more precise estimate of the overall percentage of IORPs falling below the threshold. The reason is that the IORPs – on which only aggregate data are available – falling in the EUR 25-100 million assets bucket would with certainty not meet the EUR 25 million asset condition. In total, combining the available individual and

⁵⁴ Assuming that 30% of IORPs for which individual data are available and 34% of IORPs for which no individual data are available fall within the threshold.

⁵⁵ Assuming that 30% of IORPs for which individual data are available and 57% (=34% + 23%) of IORPs for which no individual data are available fall within the threshold.

aggregate data, the percentage of IORPs falling within the small IORP threshold will be below 32%⁵⁶ of IORPs (excluding those in CY, GR and IE).

Like in option 1 and 2, under this option, the threshold in Article 3(53) of DORA would also be increased to ‘both less than 1000 members and beneficiaries and less than EUR 25 million in assets in total’. Again, the threshold in the SFDR is already directly linked to the application of Article 5 of the IORP II Directive.

Impact of the policy options

Option 1: Small IORP threshold of 1000 members and beneficiaries and EUR 50 million in assets in total		
Costs	Members ⁵⁷	Danger that small IORPs with a non-low-risk profile may inadvertently be subject to insufficient regulation/supervision, jeopardising the protection of members and beneficiaries. Potentially 31-45% of IORPs could make use of the small IORP exemption, likely representing less than 1% of assets and members and beneficiaries.
	IORPs	Some IORPs meeting the existing threshold will not meet the new threshold because they have a high amount of assets and/or a large number of beneficiaries.
	NCAAs	/
	Other	Potentially harming the legitimacy of the IORP II Directive, as 31-45% of IORPs could potentially be exempted from (some of) the minimum provisions in the IORP II Directive, although likely representing less than 1% of assets and members and beneficiaries.
Benefits	Members	Reduction in compliance costs will in the end increase benefits and/or reduce contributions.
	IORPs	Reduction of compliance costs for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.
	NCAAs	Reduction of the costs of supervision for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.

⁵⁶ Assuming that 29% of IORPs for which individual data are available and 34% of IORPs for which no individual data are available fall within the threshold.

⁵⁷ In the cost-and-benefit tables the caption “Members” should be understood to refer to members and beneficiaries.

	Other	/
Option 2: Small IORP threshold of 1000 members and beneficiaries and EUR 50 million in assets in total with grandfathering clause		
Costs	Members	Danger that small IORPs with a non-low-risk profile may inadvertently be subject to insufficient regulation/supervision, jeopardising the protection of members and beneficiaries. Potentially 33-46% of IORPs could make use of the small IORP exemption, likely representing less than 1% of assets and members and beneficiaries.
	IORPs	/
	NCAAs	/
	Other	Potentially harming the legitimacy of the IORP II Directive, as 33-46% of IORPs could potentially be exempted from (some of) the minimum provisions in the IORP II Directive, although likely representing less than 1% of assets and members and beneficiaries. The grandfathering provision may result in level-playing-field issues at national level with legacy small IORPs being subject to less stringent requirements than new small IORPs.
Benefits	Members	Reduction in compliance costs will in the end increase benefits and/or reduce contributions.
	IORPs	Reduction of compliance costs for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.
	NCAAs	Reduction of the costs of supervision for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.
	Other	/
Option 3: Small IORP threshold of 1000 members and beneficiaries and EUR 25 million in assets in total with grandfathering clause		
Costs	Members	Danger that small IORPs with a non-low-risk profile may inadvertently be subject to insufficient regulation/supervision, jeopardising the protection of members and beneficiaries. Potentially up to 32% of IORPs could make use of the small IORP

		exemption, likely representing less than 1% of assets and members and beneficiaries.
	IORPs	/
	NCAAs	/
	Other	Potentially harming the legitimacy of the IORP II Directive, as up to 32% of IORPs could potentially be exempted from (some of) the minimum provisions in the IORP II Directive, although likely representing less than 1% of assets and members and beneficiaries. The grandfathering provision may result in level-playing-field issues at national level with legacy small IORPs being subject to less stringent requirements than new small IORPs.
Benefits	Members	Reduction in compliance costs will in the end increase benefits and/or reduce contributions.
	IORPs	Reduction of compliance costs for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.
	NCAAs	Reduction of the costs of supervision for small IORPs, both in relation to IORP II as well as DORA and SFDR requirements.
	Other	/

Comparison of policy options

The current threshold for the small IORP exemption (less than 100 members) is relatively low compared to the thresholds in the Solvency II Directive. An increase in the threshold will provide Member States with more leeway to exempt IORPs from certain requirements in the IORP II Directive, but also from the requirements in the SFDR and to apply the simplified ICT risk management provisions in the DORA.

This will reduce supervisory costs of relevant NCAAs and compliance costs of low-risk IORPs, which in the end will also benefit members and beneficiaries. Still, only six Member States currently make use of the small IORP exemption, which suggests that the minimum rules in the IORP II Directive are not considered to be too burdensome in most Member States.

There is a risk that an increase in the threshold may result in small IORPs with a non-low-risk profile inadvertently being exempted from (some of) the minimum rules in the IORP II Directive, jeopardising the protection of members and beneficiaries, also considering that up to 46% of IORPs

would meet the higher thresholds in the options considered. However, the application of Article 5 is a Member State option and Member States are likely to consider whether its application is appropriate in view of the risk profile of their IORPs. Moreover, the increased thresholds in the three options are likely to cover less than 1% of IORPs when expressed as a percentage of assets or members and beneficiaries.

An increase in the thresholds to both 1000 members and beneficiaries and EUR 25 / 50 million in assets implies that some IORPs with less than 100 members will no longer be able to benefit from the small IORP exemption. The reason is that these IORPs have a substantial number of beneficiaries and/or a considerable amount of assets. In consequence, such IORPs and their NCAs will be confronted with an increase in respectively compliance and supervisory costs, which could be prevented by specifying a grandfathering clause. A disadvantage is that in relevant Member States there would not be a level playing field in the application of the small IORP exemption between legacy and new IORPs. However, this will not affect the EU internal market as small IORPs subject to Article 5 are not allowed to operate cross-border.

With regard to the asset-size condition, EIOPA prefers a level of EUR 25 million (rather than EUR 50 million) because it limits the percentage of IORPs that could potentially make use of the small IORP exemption to 32%. This further mitigates the risk of insufficient regulation in terms of the protection of members and beneficiaries as well as the risk that the IORP II Directive may lose its legitimacy. An asset condition of EUR 50 million would ensure closer alignment with Solvency II but a lower threshold can be justified given that IORP II lays down minimum rules, where Solvency II imposes harmonised regulation. Since DORA and SFDR also impose harmonised rules, a higher threshold, i.e. an asset condition of EUR 50 million instead of EUR 25 million, for the purpose of the small IORP thresholds in DORA and SFDR can be considered during their future reviews.

In conclusion, EIOPA considers that the benefits of increasing the small IORP threshold to both 1000 members and beneficiaries and EUR 25 million in assets, including a grandfathering provision, (Option 3) are likely to exceed the costs.

Risk-based proportionality formulations

Policy options

Option 0: No change

Option 1: Reformulation of proportionality provisions to ensure risk-based approach

Under this option, the formulation of the proportionality requirements in the IORP II Directive is

reduced to the ‘nature, scale and complexity of the (risks inherent in the)⁵⁸ activities of the IORP’ in Article 19(2), Article 21(2), Article 21(6), Article 23(1), Article 24(3), Article 25(1), Article 25(2), Article 26, Article 28(1), Article 28(2), Article 28(3), Article 47, Article 49(1) and Article 49(4). To ensure a risk-based approach to the application of the proportionality provisions, the references to ‘size’ and ‘internal organisation’ of the IORP would be removed.

Impact of the policy options

Option 1: Reformulation of proportionality provisions to ensure risk-based approach		
Costs	Members	/
	IORPs	Increased compliance costs for small, but high risk, IORPs that are currently being considered low risk solely because of their size and/or internal organisation.
	NCAAs	/
	Other	/
Benefits	Members	Enhances the protection of members and beneficiaries by preventing that small IORPs with high-risk profiles are excluded from IORP II standards.
	IORPs	/
	NCAAs	/
	Other	/

Comparison of policy options

EIOPA considers that the benefits of this option in terms of increased protection of members and beneficiaries will outweigh the costs. Some small, but high risk IORPs may experience an increase in costs to comply with the governance and prudential standards in IORP II, but that would be justified based on their risk profile.

Low-risk profile IORPs subject to proportionality measures

Policy options

Option 0: No change

⁵⁸ Article 28(3) would read “[..]Those methods shall be proportionate to the nature, scale and complexity of the risks inherent in its activities.”

Member States are already able to set their own criteria to define low-risk profile IORPs. Subsequently, proportionality measures can be applied to these low-risk profile IORPs. Such measures may include exemptions from certain IORP II requirements, in so far the low-risk profile IORPs fall below the small IORP threshold. Moreover, less onerous requirements can be applied to the low-risk profile IORPs, as long as these requirements adhere to the minimum standards in the IORP II Directive.

Option 1: Definition of low-risk profile IORPs and allowance for Member States to exempt these IORPs from certain IORP II minimum standards

Under this option, a category of low-risk profile IORPs is defined in the IORP II Directive using a number of objective and quantitative criteria. Subsequently, Member States would have the possibility to exempt these IORPs from certain IORP II minimum standards. This means that low-risk profile IORPs that do not meet the small IORP exemption threshold would also be able to benefit from certain exemptions.

Under this option, IORPs are considered to be low-risk profile IORPs if all of the below conditions are met⁵⁹:

- ▶ the IORP operates pension schemes in which the risks are fully borne by the members and beneficiaries;
- ▶ total assets of the IORP are not higher than EUR 1 billion;
- ▶ investments in non-traditional investments do not represent more than 20% of total investments, where traditional investments consist of bonds, equities, cash and cash equivalents and deposits and where total investments consists of all assets, excluding property for own use.

To qualify for the low-risk profile category, IORPs are required to fulfil all the criteria for two consecutive financial years. Newly established IORPs, which do not have a financial history of two years, are entitled to consider the last financial year.

Under this option, the IORP II minimum standards which would be in scope of the possible exemptions and/or a less onerous application of these standards would still have to be specified. A possibility would be to leave the choice not to apply certain standards, with the exception of Articles

⁵⁹ The conditions are in line with the conditions recommended for low-risk profile life insurance undertakings in EIOPA's Opinion on the 2020 review of Solvency II. The first condition replaces the condition in EIOPA's opinion that the SCR for interest rate risk does not exceed 5% of technical provision, given that the IORP II Directive does not contain such SCR requirements. The condition that risk should be fully borne by members and beneficiaries ensures that the IORP's interest rate risk is zero. The condition in EIOPA's opinion that cross-border activity should not exceed 5% is not included in this option 1 but will be in option 2 and 3. The reason is that option 1 allows exemptions from certain minimum requirements in IORP II, which would disqualify IORPs making use of these exemption from operating on a cross-border basis.

32 to 35, to the Member States, in line with the small IORP exemption in Article 5. Also consistent with Article 5, low-risk profile IORPs that would make use of the exemption of certain IORP II standards will under this option not be allowed to operate on a cross-border basis.

Option 2: Definition of low-risk profile IORPs and proportionality measures

Under this option, low-risk profile IORPs would be defined in the same way as under option 1, but with the addition of one additional condition:

- ▶ cross-border activity in terms of members and beneficiaries in Member States other than the home Member State is not higher than 5% of the IORP's total members and beneficiaries.

However, the proportionality measures would aim to ensure that low-risk profile IORPs can make use of the relevant minimum standards in the IORP II, i.e. without any national additions. As such, the application of the proportionality measures to low-risk profile IORPs would under this option not be a Member State option. Proportionality measures to be defined in the IORP II Directive could include:

- ▶ The review of written policies in Article 21(3): low-risk profile IORPs would be allowed to review the written policies at least every three years, unless the NCA concludes, based on the specific circumstances of the IORP, that a more frequent review is needed;
- ▶ Persons effectively running the IORP in Article 21(6): low-risk profile IORPs would be allowed to have only one person effectively running the IORP, unless the NCA concludes, based on a reasoned assessment, that the IORP should have two persons effectively running the IORP.
- ▶ The key function being carried out by a similar key function in the sponsoring undertaking in Article 24(3): low-risk profile IORPs would be allowed to carry out key functions through the same single person or organisational unit as in the sponsoring undertaking, provided that the IORP explains how it prevents or manages any conflicts of interest with the sponsoring undertaking;
- ▶ The carrying out of the own-risk assessment in Article 28(1): low-risk profile IORPs would be allowed to perform the risk assessment at least every three years or without delay following any significant change in the risk profile of the IORP or of the pension schemes operated by the IORP;
- ▶ The review of the SIPP in Article 30: low-risk profile IORPs would be allowed to review the written SIPP at least every three years or without delay after any significant change in the investment policy.

The proportionality measures listed above are already provided for in the current IORP II Directive. However, the provisions are based on minimum harmonisation and Member States may have supplemented the minimum provisions at national level or left their implementation to the NCAs.

By explicitly stating the minimum provisions for low-risk profile IORPs in the IORP II Directive, such IORPs will have more certainty that they can make use of the less onerous requirements.

A number of similar provisions are not based on minimum harmonisation but are addressed to IORPs directly. For example, Article 23(3)(f) provides that IORPs shall review and update the general principles of the remuneration policy at least every three years. Also, Article 24(2) provides that IORPs may allow a single person or organisational unit to carry out more than one key function, except for the internal audit function. Since these provisions are valid for all IORPs, and cannot be supplemented at national level, no specific requirements for low-risk profile IORPs are included under this option.

This option is meant to ensure that low-risk profile IORPs have more certainty about a proportionate application of some of the governance standards in IORP II. However, the closed list of conditions to determine whether an IORP has a low-risk profile is admittedly not comprehensive. IORPs may reach the conclusion that they fall within the low-risk profile category, while in reality they are medium-to-high risk or vice versa. Therefore, under this option, NCAs should be able to:

- ▶ challenge, based on due justification, the low-risk profile classification and the use of proportionality measures by low-risk profile IORPs;
- ▶ approve the use of proportionality measures by IORPs that are not classified within the low-risk profile category.

Option 3: Definition of low-risk profile IORPs, proportionality measures and higher standards for other IORPs

This option is the same as the previous option. However, the IORP II standards subject to proportionality measures will be raised for non-low-risk profile IORPs in order to ensure consistency. Relative to option 2, this option prevents that non-low-risk profile IORPs are subject to the same standards as the proportionality measures for low-risk profile IORPs.

Table 2.1 below provides examples of strengthened governance standards for non-low-risk profile IORPs in relation to the proportionality measures. Note that proportionality measures were added for:

- ▶ updating and reviewing the general principles of the remuneration policy (Article 23(3)(f)); and
- ▶ allowing a single person or organisational unit to carry out more than one key function, with the exception of the internal audit function (Article 24(2)).

The proportionality measures in these two areas correspond to the current minimum requirements in the IORP II Directive, while for non-low-risk profile IORPs these standards are raised.

TABLE 2.1: RAISED GOVERNANCE STANDARDS FOR NON-LOW-RISK PROFILE IORPS AND PROPORTIONALITY MEASURES FOR LOW-RISK PROFILE IORPS UNDER OPTION 3

IORP II Directive	Raised standard for non-low-risk profile IORPs	Proportionality measure low-risk profile IORPs
Article 21(3) ^a	review the written policies every year	review the written policies at least every three years
Article 21(6) ^b	at least two persons effectively running the IORP	at least one person effectively running the IORP
Article 23(3)(f) ^c	review and update the general principles of the remuneration policy every year	review and update the general principles of the remuneration policy at least every three years
Article 24(2) ^d	a single person or organisational unit not allowed to carry out more than one key function	a single person or organisational unit allowed to carry out more than one key function, with the exception of the internal audit function
Article 24(3)	not allowed to carry out key functions through the same single person or organisational unit as in the sponsoring undertaking	allowed to carry out key functions through the same single person or organisational unit as in the sponsoring undertaking
Article 28(1) ^e	to perform the own-risk assessment every year or without delay following any significant change in the risk profile	allowed to perform the own-risk assessment at least every three years or without delay following any significant change in the risk profile
Article 30	to review the SIPP every year or without delay after any significant change in the investment policy	allowed to review the SIPP at least every three years or without delay after any significant change in the investment policy

^a Article 41(3) of the [Solvency II Directive](#) provides that insurance undertakings shall review the written policies at least annually.

^b Article 258(4) of the [Solvency II Delegated Regulation](#) provides that insurance undertakings shall ensure that at least two persons effectively run the undertaking.

^c Article 275(1)(d) of the [Solvency II Delegated Regulation](#) provides that the AMSB of the insurance undertaking shall establish the general principles of the remuneration policy but does not specify the minimum frequency of reviewing and updating them. Article 41(3) in [COM's proposal to amend the Solvency II Directive](#) specifies that written policies in relation to remuneration should be reviewed annually and subject to prior approval of the AMSB, but does not specifically mention the general principles of the remuneration policy.

^d Article 271(1) of the Solvency II Delegated Regulation provides that the persons carrying out the internal audit function shall not assume any responsibility for any other function, implying that persons may carry out more than one key function. Article 41(2a) in COM’s proposal to amend the Solvency II Directive specifies that insurance undertakings should appoint different persons to carry out the key functions, while low-risk profile undertakings may have persons carrying out more than one key function other than the internal audit function.

^e Article 45(5) of the Solvency II Directive provides that insurance undertakings shall perform the ORSA regularly and without any delay following any significant change in their risk profile. Guideline 14 of EIOPA’s Guidelines on ORSA specifies that undertakings should perform the ORSA at least annually. Article 45(5) in COM’s proposal to amend the Solvency II Directive specifies that insurance undertakings shall perform the ORSA annually (and without any delay following any significant change in the risk profile), while low-risk profile undertakings may perform the ORSA at least every two years (and without any delay following any significant change in the risk profile).

Under this option, the degree of harmonisation for selected governance standards would be raised, in line with the Solvency II Directive. Still, as under option 2, NCAs would be able to challenge the use of proportionality measures by low-risk profile IORPs and approve the use of proportionality measures by non-low-risk profile IORPs.

Impact of the policy options

Option 1: Definition of low-risk profile IORPs and allowance for Member States to exempt these IORPs from certain IORP II minimum standards		
Costs	Members	Potential misclassification of medium-high risk IORPs as low-risk, may result in insufficient regulation, jeopardising the protection of members and beneficiaries.
	IORPs	/
	NCAs	/
	Other	/
Benefits	Members	Reduction in compliance costs will in the end increase benefits and/or reduce contributions.
	IORPs	Reduction of compliance costs for low-risk profile IORPs.
	NCAs	Reduction of the costs of supervision for low-risk profile IORPs.
	Other	/
Option 2: Definition of low risk profile IORPs and proportionality measures		
Costs	Members	Potential misclassification of medium-high risk IORPs as low-risk, may result in insufficient regulation, jeopardising the protection of members and beneficiaries.
	IORPs	/

	NCA	Additional costs to review and potential challenge the low-risk classification of IORPs as well as the use of proportionality measures.
	Other	/
Benefits	Members	Enhanced proportionality will reduce compliance costs of IORPs and in the end result in higher benefits and/or lower contributions.
	IORPs	Reduced compliance costs for low-risk profile IORPs due to proportionality measures.
	NCA	/
	Other	/
Option 3: Definition of low-risk profile IORPs, proportionality measures and higher standards for other IORPs		
Costs	Members	Potential misclassification of medium-high risk IORPs as low-risk, may result in insufficient regulation, jeopardising the protection of members and beneficiaries. Increased compliance costs for non-low-risk profile IORPs will in the end result in lower benefits and/or higher contributions.
	IORPs	Increased compliance costs for non-low-risk profile IORPs due to higher governance standards.
	NCA	Additional costs to review and potential challenge the low-risk classification of IORPs as well as the use of proportionality measures.
	Other	/
Benefits	Members	Enhanced proportionality will reduce compliance costs of low-risk profile IORPs and in the end result in higher benefits and/or lower contributions. Enhanced protection of members and beneficiaries by raising the governance standards for non-low-risk profile IORPs.
	IORPs	Reduced compliance costs for low-risk profile IORPs due to proportionality measures.
	NCA	/

	Other	/
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Comparison of policy options

Member States already have the possibility to define low-risk profile IORPs at national level within the limits of the IORP II Directive, as mentioned in the description of the no change option. Proportionality measures may include exemptions from certain IORP II requirements, in so far the low-risk profile IORPs fall below the small IORP threshold. Less onerous requirements can be applied to low-risk profile IORPs, as long as these requirements adhere to the minimum standards in the IORP II Directive.

The first option allows Member States the possibility to exempt low-risk profile IORPs from certain minimum standards in IORP II, basically widening the scope of the small IORP exemption to larger IORPs that have a low-risk profile. Still, only six Member States apply the small IORP exemption, indicating that the minimum requirements in IORP II are not too burdensome for most IORPs.

In addition, Member States are already afforded more leeway to exempt low-risk profile IORPs, since EIOPA advises to increase the threshold for the small IORP exemption, resulting in up to 32% of IORPs falling under the threshold.

The second and third option aim to prevent national additions to some of the governance and prudential standards for low-risk profile IORPs. Under option 2, low-risk profile IORPs are permitted to make use of the minimum standards in IORP II, but there is the possibility that Member States apply these minimum standards also to non-low-risk profile IORPs. Under option 3, this inconsistency is prevented by raising the bar for non-low-risk profile IORPs in relation to a number of governance and prudential standards. However, this would imply harmonised standards in these areas, which would be difficult to reconcile with the minimum harmonisation nature of the IORP II Directive.

In conclusion, EIOPA recommends not to introduce the concept of low-risk profile IORPs into the IORP II Directive. The IORP II Directive already allows Member States to apply a proportionate approach through the small-IORP exemption and principle-based rather than precise requirements. Still, EIOPA's survey among NCAs indicated that proportionality is not applied in a consistent way in the different Member States, a finding that was confirmed by several stakeholders during the public consultation. To promote risk-based supervision and to enhance supervisory convergence, EIOPA will consider including in its future work programmes the application of proportionality by NCAs using the convergence tools at its disposal.

2.3.6. ADVICE

EIOPA considers it essential that supervision is risk-based and forward-looking and that the governance and prudential standards in the IORP II Directive are applied in a manner that is proportionate to the risk profile of IORPs.

The threshold for the small IORP exemption is relatively small. EIOPA recommends increasing the threshold, in line with Option 3 in sub-section 'Small IORP exemption' of section 2.3.5, to ensure that Member States have more leeway to exempt small IORPs from the IORP II requirements, if they consider that to be appropriate in view of the risk profile of their small IORPs.

For that purpose, Article 5 of the IORP II Directive should be amended as follows:

With the exception of Articles 32 to 35, Member States may choose not to apply this Directive, in whole or in part, to any IORP registered or authorised in their territories which operates pension schemes which together have ~~less than 100 members~~ less than 1000 members and beneficiaries and less than EUR 25 million in assets in total. Subject to Article 2(2), such IORPs shall nevertheless be given the right to apply this Directive on a voluntary basis. Article 11 may be applied only if all the other provisions of this Directive apply. Member States shall apply Article 19(1) and Article 21(1) and (2) to any IORP registered or authorised in their territories which operates pension schemes which together have more than 15 members in total.

Where, on the entry into force of this Directive, Member States apply the exemption to IORPs which operate pension schemes which together have less than 100 members in total, those Member States may continue to apply that exemption to those IORPs as long as those IORPs continue to operate pension schemes which together have less than 100 members in total.

[..]

In addition, in order to maintain consistency with the amended Article 5, point (53) of Article 3 of DORA should be amended as follows:

(53) 'small institution for occupational retirement provision' means an institution for occupational retirement provision which operates pension schemes which together have ~~less than 100 members~~ less than 1000 members and beneficiaries and less than EUR 25 million in assets in total or which together have less than 100 members in total and in respect of which the Member State has chosen to apply Article 5 of Directive (EU) 2016/2341 on [entry into force date of revised threshold];

EIOPA advises to consider a higher threshold, i.e. an asset condition of EUR 50 million instead of EUR 25 million, for the purpose of the small IORP thresholds in DORA and SFDR during their future reviews.

EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive (Option 0 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5), considering that the IORP II Directive already allows Member States to apply a proportionate approach through the small-IORP exemption and principle-based rather than precise requirements. To promote risk-based supervision and to enhance supervisory convergence, EIOPA will consider including in its future work programmes the application of proportionality by NCAs using the convergence tools at its disposal.

To ensure a risk-based and proportionate approach, EIOPA advises to amend 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' (Option 1 in sub-section 'Risk-based proportionality formulations' of section 2.3.5), ensuring that proportionality is applied commensurate to the risk profile.

2.4. LIQUIDITY RISK MANAGEMENT

2.4.1. RELEVANT LEGAL PROVISIONS

Article 25(2)(d) of the IORP II Directive requires IORPs to cover liquidity risk in their risk-management system, in a manner that is proportionate to their size and internal organisation as well as to the size, nature, scale and complexity of their activities, and where applicable. Article 28 requires IORPs to carry out and document their ORA. Article 49(1) provides that the SRP should comprise an assessment of the risks the IORP faces and the ability of the IORP to assess and manage those risks. In addition, Article 49(3) provides that NCAs have the necessary powers to require IORPs to remedy weaknesses of deficiencies identified in the SRP.

2.4.2. OTHER REGULATORY BACKGROUND

The ESRB provided policy recommendations in the context of the Solvency II 2020 review on the management and supervision of liquidity risks in relation to derivative hedging of insurance

undertakings, advising that the liquidity risks should be analysed in the ORSA of undertakings using stress tests as well as in the SRP.⁶⁰

2.4.3. IDENTIFICATION OF THE ISSUE

The IORP II Directive allows IORPs to invest in derivative instruments to mitigate risks and to facilitate efficient portfolio management. IORPs hold derivatives to protect themselves against fluctuations in risk factors such as:

- ▶ interest rates in relation to the interest rate mismatch risk between assets and liabilities;
- ▶ foreign exchange rates in relation to investments denominated in foreign currencies.

Although such derivative hedging reduces solvency risk, it also introduces new risks, most notably counterparty default risk and liquidity risk. Over-the-counter derivatives can be cleared centrally through a central counterparty (CCP) or bilaterally between the two counterparties in the derivative transaction (e.g. an IORP and a bank). To protect against default risk, the European Market Infrastructure Regulation (EMIR) requires that counterparties exchange, with the CCP or each other:

- ▶ variation margin on a daily basis to cover any losses in the market value of the derivative; and
- ▶ initial margin to cover for a potential default of the counterparty in between the daily exchange of variation margin.

CCPs tend to require variation margins to be posted in cash. In bilateral transactions, the collateral that can be used to meet variation margin calls is not limited to cash alone, but cash is usually the only instrument that can be exchanged within a very short time frame. As such, the imminent daily liquidity risk from variation margin calls is almost the same.⁶¹

EMIR seeks to further reduce counterparty default risk by requiring that standardised classes of derivatives – such as interest rate swaps - are cleared through a CCP. CCPs mutualise residual losses among clearing members through contributions to a dedicated default fund. Pension scheme arrangements (PSAs) were exempt from central clearing under EMIR, but this exemption has come

⁶⁰ In ESRB, [Enhancing the macroprudential dimension of Solvency II](#), February 2020, the ESRB recommends “to reinforce the Pillar 2 provisions of Solvency II with stress testing and the power for supervisors to require a liquidity buffer for vulnerable (re)insurers. Two types of policy actions could be conducted. First, (re)insurers should be asked to incorporate stress tests into their risk monitoring framework and their own risk solvency assessment, perhaps using the scenario analyses performed in this report as a starting point. This would allow them to plan their liquidity needs and assess the extent to which they are able to rely on cash they hold and on arrangements with third parties for centralised collateral management. Second, the supervisory review process should assess the effect of liquidity stresses due to margin calls on all types of derivatives that are subject to these requirements. Supervisors should compare liquidity needs with the various possible sources of liquidity, such as those provided by third parties. If supervisors conclude that a (re)insurer might face a liquidity shortfall, and this shortfall cannot be resolved via arrangements with third parties, supervisors should ultimately have the power, via a Pillar 2 tool, to require the (re)insurer to set up a cash buffer corresponding to a certain level of margin calls.”

⁶¹ ESRB, [Enhancing the macroprudential dimension of Solvency II](#), February 2020.

to an end in June 2023. Even though the clearing obligation will further mitigate default risk, liquidity risk will remain.

Liquidity risk results from the daily exchange of variation margin to cover any market losses on derivatives. For example, an IORP which hedges interest rate risk through an interest rate swap will experience an increase in the value of the derivative when interest rates decline (mitigating an increase in the value of liabilities) and a decrease in the value of the derivative when interest rates rise (compensating a decrease in the value of liabilities).⁶² When the market value of the derivative increases the IORP receives collateral as variation margin and when the market value decreases the IORP has to pay collateral, which usually has to be posted in cash. The same mechanism is at work when an IORP hedges exchange rate risk on investments denominated in foreign currencies through currency forward contracts.

As such, IORPs holding interest rate swaps or foreign exchange forward contracts are vulnerable to a sudden and large rise in interest rates or appreciation of the foreign currency:

- ▶ An ESMA (European Securities and Markets Authority) analysis shows that a 100 bps rise in interest rates would cause a cash variation requirement of around EUR 95 billion across Dutch, Danish and Irish pension schemes.⁶³
- ▶ An analysis by the ECB (European Central Bank) shows that, following a 100 bps interest rate rise, margin calls on interest rate swaps of Dutch IORPs could amount to EUR 47 billion, resulting in an aggregate cash shortfall of EUR 15 billion and 55% of Dutch IORPs not having sufficient cash to cover the margin calls. Still, 96% of Dutch IORPs are found to have a sufficient amount of high-rated government bonds that could be used for collateral transformation through the repo market.⁶⁴
- ▶ A study by the Dutch AFM finds that five large asset managers of IORPs experienced cash margin calls of EUR 29 billion within seven days at the height of the corona crisis in March 2020, which triggered a rise in 30-year interest rates of 40 bps and a substantial appreciation of the US dollar. The AFM concludes that the liquidity pressure on asset managers would have further increased,

⁶² This stylised example assumes that the IORP pays the floating rate and receives the fixed rate in the interest rate swap. This would reduce interest rate risk where the interest rate sensitivity of the liabilities exceeds the interest rate sensitivity of the assets. However, it is not unthinkable that the IORP enters into a swap contract in which it receives the floating rate and pays the fixed rate. This would reduce interest rate risk where the interest rate sensitivity on assets exceeds the interest rate sensitivity of liabilities, e.g. in case liabilities are calculated using fixed discount rates. Finally, it is possible that IORPs enter in both types of swap contracts, e.g. to offset maturing contracts or to mimic particular interest rate sensitivities at different maturities.

⁶³ [ESMA, Report on the Central Clearing Solutions for Pension Scheme Arrangements \(No. 2\), Report to the European Commission, 17 December 2020.](#)

⁶⁴ See Box A Liquidity stress simulations of euro area pension funds' interest rate swap portfolios in [ECB, Financial Stability Review, May 2020.](#)

if the ECB had not introduced the pandemic emergency purchase programme on 18 March, which halted the rate rise and supported the money markets.⁶⁵

Last year's events in the UK have demonstrated the adverse consequences of insufficient liquidity risk management in relation to derivative hedging positions of pension schemes. At the end of September 2022, UK 30-year gilt yields rose by 140 bps within a four-day period, confronting UK pension schemes with large losses on interest rate hedging positions. UK pension schemes not only hedge interest rate risk with derivatives. They also increase the interest rate sensitivity on the asset side by borrowing short-term cash collateralised by UK gilts (repo) and reinvesting the proceeds in additional long-term gilts.⁶⁶ These hedging strategies are often implemented through liability-driven investment (LDI) funds. The sharp rise in interest rates forced UK pension schemes to raise cash quickly in order to meet margin and collateral calls, often via the LDI fund. As a result, pension schemes and LDI funds, if the pension scheme could not provide its LDI fund with cash in time, had to sell UK gilts at steep discounts. This resulted in further interest rate rises, aggravated by the concentration of investments in very long maturities and the shallow market for those bonds, necessitating the Bank of England to step in to support the gilt market.⁶⁷

To prevent fire-sales of assets to raise liquidity and/or the cancellation of derivative contracts, if the necessary cash cannot be raised, it is essential that IORPs manage and mitigate liquidity risks. This means that IORPs should regularly assess liquidity needs for margin calls under stressed market conditions, like a substantial appreciation of the USD and hike in interest rates (e.g. the 100 bps used in the above studies).

Subsequently, to minimise forced asset sales, IORPs should ascertain that they dispose of sufficient cash and high-quality government bonds that can serve as collateral to borrow cash through repurchase agreements (repo). The cash and high-quality bonds should be directly available to the IORP and not be tied up at asset managers, in investment funds or securities lending programmes.⁶⁸

⁶⁵ [AFM, Liquiditeitsrisico van margin calls in maart 2020 - Een analyse van derivatenportefeuilles beheerd door Nederlandse vermogensbeheerders, Occasional Paper, December 2021.](#)

⁶⁶ To keep the leveraged government bond position in place, this hedging strategy involves rolling over the short-term repo borrowing turning it into structural, long-term borrowing, which is not permitted by the IORP II Directive. Article 19(3) of the provides that IORPs shall be prohibited from borrowing. Member States may only authorise IORPs to carry out some borrowing for liquidity purpose and on a temporary basis. Therefore, hedging strategies involving structural borrowing are not further considered in relation to IORPs.

⁶⁷ See chapter 5 'In focus – The resilience of liability-driven investments funds' in [Bank of England, Financial Stability Report, December 2022](#) for an analysis of and the lessons learned from the event.

⁶⁸ Liquid assets of Dutch IORPs were tied up in investment funds/mandates and securities lending programmes during the 2008 financial crisis, which contributed to the liquidity problems experienced by these IORPs in relation to margin calls on (EUR/USD) derivative hedging positions. See box on page 68 of [DNB, Renteaftdekking van Pensioenfondsen, Onderzoek op verzoek van het Ministerie van Sociale Zaken en Werkgelegenheid](#), November 2015 (in Dutch).

⁶⁹ Also, repo arrangements with banks should be in place, given that the whole legal and operational process will take substantial time to complete, while cash margin calls will have to be fulfilled within a day.

2.4.4. ANALYSIS

Policy options

Option 0: No change

Option 1: Liquidity risk assessment in the ORA and SRP, where IORPs have material derivative exposures

Under this option, an explicit provision would be included in Article 28 on the ORA that IORPs should assess their liquidity risk in relation to derivative positions using sensitivity analysis, such as:

- ▶ an increase and decrease in interest rates (e.g. +/- 100 bps);
- ▶ an appreciation and depreciation of the of the relevant foreign currencies;
- ▶ an increase and decrease of any other price of the underlying of derivative positions.

Moreover, IORPs would have to explain how they manage and mitigate liquidity risks, e.g. in terms of cash buffer holdings, availability of high-quality government bonds for liquidity transformation and the availability of repo arrangements.

In Article 49 on the SRP, an explicit provision would be included that the review should assess the liquidity risks of IORPs relating to derivative hedging positions as well as an assessment of the ability of the IORP to assess and manage those risks.

The existing Article 49(3) already empowers NCAs to require IORPs to remedy weaknesses or deficiencies identified in the SRP, e.g. additional cash buffers to prevent expected liquidity shortfalls.

The provisions in the ORA and SRP will only be applicable for IORPs with material derivative exposures, where the interpretation of material can be decided at national level.

⁶⁹ UK pension schemes tend to hedge interest rate risk through LDI funds that provide leveraged exposure to long-term bonds, either through repo borrowing or derivatives. As a result, the leveraged bond exposure / derivative position is separated from the pension schemes' assets, which would be needed to raise liquidity for cash margin calls. During the 2022 events, this especially proved to be a problem for the so-called pooled LDI funds, given the operational lags and the large number of investors. See Bank of England, Financial Stability Report, December 2022.

Option 2: EIOPA to issue guidelines or opinion on the supervision of liquidity risk in relation to IORPs with material liquidity risk

Under this option, EIOPA will issue guidelines or an opinion on the supervision of liquidity risk in relation to IORPs with material liquidity risk.⁷⁰ Article 25(2)(d) of the IORP II Directive already requires IORPs to cover liquidity risk in their risk-management system. The guidelines or the opinion would lay down EIOPA’s more detailed expectations on the supervision of liquidity risk management of IORPs, including liquidity risk linked to derivative exposures.

Impact of the policy options

Option 1: Liquidity risk assessment in the ORA and SRP, where IORPs have material derivative exposures		
Costs	Members	Additional costs for the IORP may have negative consequences in terms of benefits and/or contributions.
	IORPs	Mentioning specific risks in the ORA may result in IORPs ignoring other material risk to which they are exposed. Compliance costs of doing the liquidity risk assessment, if IORPs are not already doing so.
	NCA	Introducing specific risks in the SRP may result in NCA ignoring other material risks to which IORPs are exposed. Increased costs of conducting SRP, if NCA are not already assessing liquidity risk relating to derivative positions.
	Other	/
Benefits	Members	Enhanced liquidity management will prevent: <ul style="list-style-type: none"> ▶ assets being sold at discounts, thereby increasing returns and increasing benefits and/or lowering contributions; ▶ derivative hedging positions being cancelled, if margin calls cannot be met, reducing risk exposures of members and beneficiaries.
	IORPs	Better understanding of liquidity risk exposures and enhanced mitigating measures and contingency planning.
	NCA	/

⁷⁰ Regulation (EU) No 1094/2010 empowers EIOPA to issue guidelines (Article 16) and opinions to competent authorities (Article 29).

	Other	Enhanced liquidity management will prevent fire-sales, contributing to financial stability.
Option 2: EIOPA to issue guideline or an opinion on the supervision of liquidity risk in relation to IORPs with material liquidity risk		
Costs	Members	Additional costs for the IORP may have negative consequences in terms of benefits and/or contributions.
	IORPs	Compliance costs of doing the liquidity risk assessment, if IORPs are not already doing so.
	NCAAs	Increased costs, if NCAAs are not already assessing liquidity risk of IORPs.
	Other	/
Benefits	Members	Enhanced liquidity management will contribute to preventing: <ul style="list-style-type: none"> ▶ assets being sold at discounts, thereby increasing returns and increasing benefits and/or lowering contributions; ▶ derivative hedging positions being cancelled, if margin calls cannot be met, reducing risk exposures of members and beneficiaries.
	IORPs	Better understanding of liquidity risk exposures and enhanced mitigating measures and contingency planning.
	NCAAs	/
	Other	Enhanced liquidity management will prevent fire-sales, contributing to financial stability.

Comparison of policy options

It is essential that IORPs properly assess and manage liquidity risk relating to material derivative exposures. This should ensure that IORPs are well prepared to meet cash needs in case of sudden and substantial declines in the market value of their derivative positions and to prevent fire-sales and the associated negative impacts on sponsors, members and beneficiaries as well as financial stability.

IORPs are already required to cover liquidity risk in their risk-management system, while NCAAs should include in the SRP an assessment of the risks the IORP faces. There is the possibility that by further specifying liquidity risks in the IORP II Directive, IORPs will give less priority to other material risks. However, there is already some precedent with Article 28 on ORA mentioning a number of

specific risks: operational and sustainability risks. Moreover, a cross-sectoral EU regulation (DORA) was introduced to address the management of cyber risks by financial institutions. Nevertheless, EIOPA's preferred option is to further set supervisory expectations in relation to liquidity risk management through guidelines or an opinion. This will also maintain the principle-based, minimum harmonisation character of the IORP II Directive.

2.4.5. ADVICE

EIOPA recommends that IORPs and NCAs have insight in material liquidity risks, including in respect of cash margin calls on derivative exposures.

All IORPs with material derivative exposures should:

- ▶ carry out a liquidity risk assessment in relation to derivative positions;
- ▶ analyse the IORP's ability to manage and mitigate those liquidity risks.

EIOPA will issue guidelines or an opinion on the supervision of liquidity risk in relation to IORPs with material liquidity risk (Option 2).

2.5. CONDITIONS OF OPERATION OF IORPS AND MANAGEMENT OF CONFLICT OF INTEREST WITH SERVICE PROVIDERS

2.5.1. RELEVANT LEGAL PROVISIONS

Article 9 of the IORP II Directive requires Member States to ensure that IORPs are registered in a national register or authorised by the NCA. Article 10 sets forth the operating requirements for registered or authorised IORPs. Article 21 lays down the general governance requirements and Article 22 the fit-and-proper requirements for persons who effectively run the IORP and for persons who carry out key functions. Article 31 imposes requirements for IORPs outsourcing key functions and any other activities to service providers. NCAs are provided with the necessary powers for the supervisory review process in Article 49 and for the collection of information in Article 50. The IORP II Directive addresses conflicts of interest in relation to the investment of assets (Article 19(1)(a)), the remuneration policy (Article 23(3)), key function holders with a similar function at the sponsor (Article 24(3) and 28(2)(c)), depositaries (Article 33(7) and 34(5)(c)) and situations where no depositary is appointed (Article 33(8)).

2.5.2. OTHER REGULATORY BACKGROUND

On 12 November 2020, EIOPA issued a Supervisory statement on the sound practices within the registration or authorisation process of IORPs.⁷¹ The statement aims to achieve supervisory convergence in the divergent approaches to assess if IORPs are prudentially sound to operate, both domestically and across borders. To that end, NCAs are expected to carry out a prudential assessment as part of the registration or authorisation process and continue to monitor the prudential soundness of IORPs as part of the SRP.

In 2019, EIOPA published an opinion on the use of governance and risk assessment documents in the supervision of IORPs.⁷² The opinion contained the expectation that NCAs consider the use of IORPs' business plans in their supervisory framework and that, for example, a change in an IORP's business plan may trigger a review of the ORA. At the same time, an opinion on the supervision of the management of operational risks by IORPs⁷³ was published, which also paid special attention to the management of outsourcing risk. In 2021, EIOPA issued an opinion on the supervisory reporting of costs and charges of IORPs⁷⁴, expecting NCAs to collect transparent cost data from their IORPs and, hence, IORPs from their service providers.

2.5.3. IDENTIFICATION OF THE ISSUE

The IORP II Directive allows Member States to either register IORPs in a national register or to require IORPs to be authorised by the NCA. A small number of NCAs do not authorise IORPs⁷⁵ and either register them initially, and then conduct their prudential assessment, or, in a much smaller number of cases, NCAs may not carry out an assessment at all.

The absence of a prudential assessment as part of the registration or authorisation process of IORPs may impair the proper functioning of the internal market and the protection of the rights of members and beneficiaries in host Member States. IORPs granted registration or authorisation will be permitted to operate both domestically and cross-border, regardless of whether they intend to provide cross-border activities (see also section 3.6).

⁷¹ [EIOPA, Supervisory statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activity, EIOPA-BoS-20/642, 12 November 2020.](#)

⁷² [EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19/245, 10 July 2019.](#)

⁷³ [EIOPA, Opinion on the supervision of the management of operational risks faced by IORPs, EIOPA-BoS-19/247, 10 July 2019.](#)

⁷⁴ [EIOPA, Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/426, 7 October 2021.](#)

⁷⁵ Some MS that operate a registration regime for IORPs require multi-sponsor IORP providers (MIPs) to seek authorisation or plan to do so in the future. In NL, PPI and APFs must be authorised by DNB before they can start their operations, IE plans to introduce legislation for the authorisation of master trusts.

Around 12% of cross-border IORPs – for example – do not manage domestic occupational pensions in the home Member State they operate from.⁷⁶ Although IORPs can freely operate from any Member State, this introduces the risk of regulatory arbitrage which would consist of IORPs establishing their operations in Member States with less strict prudential requirements.

Conditions of operation

Occupational pension schemes provided by IORPs are very long-term arrangements. At present, the IORP II Directive does not contain explicit provisions, in the conditions of operations nor in the SRP, that IORPs have a viable and credible business model to provide occupational pension services in the long-term, i.e. have adequate means to cover current and future operating costs without relying on unsustainably high fees.

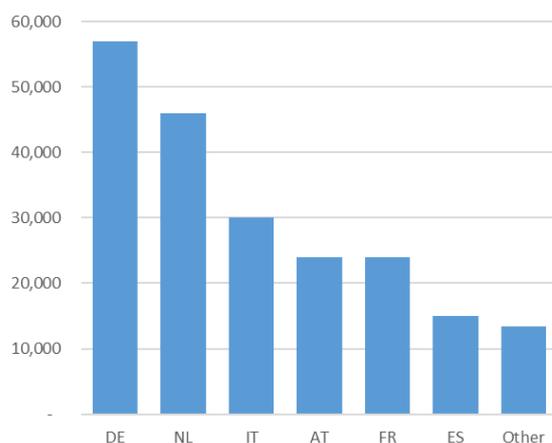
This is relevant for all IORPs, but in particular for multi-sponsor IORP providers (MIPs) set up by service providers which offer services to different unrelated sponsors. In 2018, EIOPA reported an increased number of MIPs – some of which also operate cross-border.⁷⁷ Unlike multi-sponsor IORPs set up by a sponsor or group of sponsors, IORPs established by service providers seek to manage occupational pensions of sponsors who are not related. While these IORPs are standalone funds, often with legal personality, they are established by another entity ('founding entity' hereafter) interested in providing occupational pensions through the IORP II Directive. Establishing a single-sponsor IORP is a costly and complex process which many employers cannot afford. In some sectors and in some Member States, it is also not always feasible to set up industry schemes through collective agreements. For these sectors and employers, MIPs can bring benefits to employers and employees, such as accessing occupational pensions, benefiting from scale economies and facilitating market consolidation.

In 2021, there were 718 multi-sponsor IORPs, of which nearly 4 in 10 were MIPs. Looking at DC pensions, this figure rises further with MIPs representing just under half of all multi-sponsor IORPs providing DC schemes. In 2021, MIPs accounted for circa EUR 210 billion of AuM. DE, IT and NL accounted for more than 60% of total AuM for MIPs. Another 30% of total AuM can be allocated to MIPs located in AT, FR and ES (see Figure 2.7A). MIPs serve approximately 10.1 million members and beneficiaries, which is almost 20% of the total IORP membership (see Figure 2.7B).

⁷⁶ [EIOPA, 2022 Report on cross-border IORPs, EIOPA-BoS-22/556, 16 December 2022.](#)

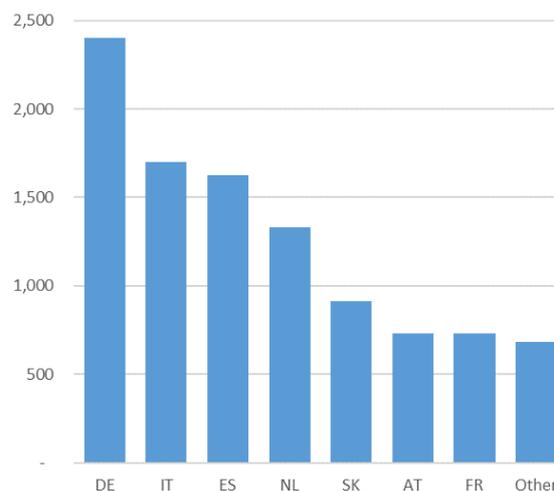
⁷⁷ [EIOPA, 2017 Market development report on occupational pensions and cross-border IORPs, EIOPA-BoS-18/013, 30 January 2018.](#)

FIGURE 2.7A: MIPS' AUM IN 2021, IN EUR MILLION



Note: Other includes SK, IE, BE, PT, SI, LI, LU, LV, CY, HR, MT, BG and HU.

FIGURE 2.7B: MIPS' NUMBER OF MEMBERS AND BENEFICIARIES IN 2021, IN THOUSAND MEMBERS



Note: Other includes LV, SI, IE, BE, BG, LU, PT, CY, HR, LI, MT and HU.

MIPs most frequently offer and manage DC schemes with 51% of total AuM, followed by DB schemes (40% of total AUM) and MIPs providing both DB and DC schemes (10% of total AUM). In six Member States, MIPs operate on a cross-border basis. In three Member States, they aim to expand cross-border business to attract new sponsors in existing host Member States or in new host Member States. Insurance undertakings are the predominant type of founding entity for these IORPs, followed by banks, asset managers and consultancies.

Although MIPs contribute to meeting the evolving sponsor demand for occupational pensions in Europe, this type of IORP also raises prudential questions about their viability and credibility as long-term occupational pension providers, as the sustainability of MIPs' business model depends on how successful they are in achieving their business goals. In some Member States, MIPs actively search the market for clients (i.e. sponsors) which therefore incur acquisition costs. Moreover, the absence of connection between sponsors means that there is likely no or only limited cross-subsidy between sponsors in case of operational failure/bankruptcy of the IORP.

Conflicts of interest

Conflicts of interest may potentially arise at several stages and among the various parties related to the activities of IORPs:

- ▶ Conflicts of interest between the IORP and its sponsor(s);
- ▶ Conflicts of interest between the different service providers of the IORP;
- ▶ Conflicts of interest between the IORP and its service provider(s);
- ▶ Conflicts of interest between the IORP and the membership due to the potential misalignment between the IORP's decisions and the interests of members and beneficiaries.

MIPs also introduce conflicts of interest between the IORP and the founding entity with a potential impact on members and beneficiaries. Often there is less or no involvement of sponsors, employees and members in the governance and management of these IORPs. MIPs are set up for commercial purposes regardless of whether the IORP is a for-profit or non-profit entity. Typically, the activities of the IORP are outsourced to the founding entity or related persons within the financial group. Profit is made from fees and charges for those outsourced services. There is a risk that a multi-sponsor IORP established by a service provider does not provide satisfactory services or overcharges members and beneficiaries. Although sponsors can decide to move to a different IORP, switching will depend on the level of sponsor scrutiny over the IORP's services and alternative choices.

IORPs tend to outsource at least part, and often all of their activities to service providers. Conflicts of interest may therefore arise with service providers, and where relevant their founding entities, and should be managed properly to ensure that the IORP's activities and decisions are aligned with the interests of the members and beneficiaries and that IORPs offer value for money to members and beneficiaries.

The IORP II Directive includes provisions on potential conflicts of interest, but these are currently limited to investments, safekeeping of assets, remuneration policy and the relationship vis-à-vis the sponsoring undertaking, i.e. outsourced key functions to the sponsor. As such, potential conflicts of interest stemming from the relation between the IORPs and its service providers are not addressed comprehensively in the IORP II Directive, which may lead to member and beneficiary detriment.

2.5.4. ANALYSIS

Policy options

Option 0: No change

Option 1: Requirements on the conditions of operations of IORPs and the management of conflict of interest with service providers

This option proposes amendments to the relevant provisions of the IORP II Directive to ensure that:

- ▶ IORPs are credible long-term providers of occupational pension services;

- ▶ IORPs have in place a sound business plan which NCAs should use in their assessment, most notably in relation to the risk and impact of an IORP’s default;
- ▶ IORPs’ decisions are aligned with the best (sole) interest of members and beneficiaries and do not cause detriment in case of potential conflicts of interest between the IORP and its service providers;
- ▶ the internal market functions properly in a cross-border context.

This option seeks to address gaps in the IORP II Directive by:

- ▶ requiring NCAs to conduct a prudential assessment as part of the authorisation / registration of IORPs, taking into account the nature, scale and complexity of the activities of the IORP concerned⁷⁸;
- ▶ requiring IORPs, as part of the operating requirements, to have adequate resources to cover their current and future operating costs;
- ▶ assessing the operational viability and sustainability of IORPs as part of the SRP, which already takes into account the nature, scale and complexity of the activities of the IORP;
- ▶ requiring IORPs seeking registration or authorisation to submit a business plan and to empower NCAs to require the submission of business plans on an ongoing basis, where deemed necessary for the purpose of supervision⁷⁹;
- ▶ identifying potential conflicts of interest related to outsourcing activities and, in case of potential conflicts of interest, ensuring that the IORP’s activities and decisions are aligned with the interests of members and beneficiaries;⁸⁰ and
- ▶ requiring transparency of the direct and indirect costs in the outsourcing agreement with the service provider⁸¹.

Impact of the policy options

Option 1: Requirements on the conditions of operations of IORPs and the management of conflict of interest with service providers		
Costs	Members	/

⁷⁸ In line with EIOPA’s Supervisory Statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activities ([EIOPA-BoS-20/642](#))

⁷⁹ In line with EIOPA’s Opinion on the use of governance and risk assessment documents in the supervision of IORPs ([EIOPA-BoS-19/245](#)).

⁸⁰ In line with EIOPA’s Opinion on the supervision of the management of operational risks faced by IORPs ([EIOPA-BoS-19/247](#)).

⁸¹ In line with EIOPA’s Opinion on the supervisory reporting of costs and charges of IORPs ([EIOPA-BoS-21/426](#)).

	IORPs	Higher compliance costs, where (potential) IORPs are not yet subject to the requirements. The additional compliance costs are mitigated by the proportionality measures accompanying the proposed requirements.
	NCA's	Higher supervisory costs for NCA's that do not carry out a prudential assessment of the viability and sustainability of IORPs within their registration or authorisation process and supervisory review process.
	Other	/
Benefits	Members	Increased member protection by preventing premature wind-ups of IORPs and mitigating conflict-of-interest risks which, if not properly managed, could potentially lead to higher costs and charges, in particular for DC members.
	IORPs	Level-playing field as IORPs in all home Member States will be subjected to a prudential assessment within the registration or authorisation process.
	NCA's	Supervisory convergence regarding the assessment of the soundness and stability of IORPs during authorisation or registration and as part of on-going supervision, mitigating the risk of regulatory arbitrage.
	Other	Enhanced functioning of the internal market through greater transparency on the conditions of operation for IORPs to operate domestically and across borders, ensuring that IORPs are financially sound and stable to cover their current and future operating costs.

Comparison of policy options

The IORP II Directive does not have specific provisions on the impact of IORPs' default and potential detriment to members and beneficiaries stemming from conflicts of interest between the IORP and its service providers.

The requirements under option 1 on the conditions of operations of IORPs and the management of conflict of interest with service providers would benefit members and beneficiaries by:

- ▶ lowering costs and charges by fostering the management and prevention of potential conflict of interest with the IORP's service providers;
- ▶ reducing exposures to the costs of wind-up and bankruptcy by enhancing the prudential requirements ensuring that IORPs have a sound business strategy to operate domestically and

across borders as well as have sufficient financial support to cover their operating costs to avoid the risk of default.

The prudential assessment during the registration or authorisation process as well as the supervisory review process will also enhance the functioning of the internal market by contributing to the viability and sustainability of all IORPs, irrespective of their home Member State.

IORPs and potential IORPs, which want to be authorised or registered, will face additional compliance costs in Member States where they are not yet subject to the proposed operating and conflict of interest requirements. In that respect, EIOPA already conveyed similar expectations to NCAs through a supervisory statement and several opinions (see section 2.5.2). Moreover, the option envisages a proportionate application of the requirements. The prudential assessment during the registration or authorisation process should take into account the nature, scale and complexity of the activities of the IORP concerned. The same is true for the ongoing assessment of the viability and sustainability of IORPs in the SRP, for which IORPs only have to submit (updated) business plans if considered necessary by the NCA. Therefore, EIOPA expects that the benefits of Option 1 will outweigh the costs.

2.5.5. ADVICE

In order to ensure adequate conditions of operation for IORPs within the internal market and protect members and beneficiaries from potential conflict of interest between IORPs and service providers, EIOPA recommends making amendments to the IORP II Directive (Option 1) as follows:

▶ **Article 6 (definitions)**

(20) “service provider” means an undertaking to which an IORP has outsourced activities covered by this Directive.

▶ **Article 9 (registration or authorisation)**

Member States shall, in respect of every IORP, the main administration of which is located in their territories, ensure that the IORP is registered in a national register, or authorised, by the competent authority. Member States shall require competent authorities to perform a prudential assessment as part of the authorisation or registration of IORPs. The assessment shall take into account the nature, scale and complexity of the activities of the IORP concerned.

For the purpose of paragraph 1, IORPs seeking authorisation or registration shall prepare and submit a business plan to the competent authority. The business plan shall include projections of at least three years of the IORP’s income and expenses and a breakdown of the IORP’s

operational costs, including where relevant, the distribution and acquisition costs and any other elements to assist the competent authorities to assess compliance with the operating requirements.

▶ **Article 10 (operating requirements)**

Member States shall, in respect of every IORP registered or authorised in their territories, ~~ensure~~ require that:

- (a) the IORP has implemented properly constituted rules regarding the operation of any pension scheme;
- (b) where the sponsoring undertaking guarantees the payment of the retirement benefits, it is committed to regular financing;
- (c) the IORP has adequate financial resources to cover its current and future operating costs.

▶ **Article 21 (general governance requirements)**

1. Member States shall require all IORPs to have in place an effective system of governance which provides for sound and prudent management of their activities. That system shall include an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information and management of conflicts of interest.

6. Member States shall require IORPs to have at least two persons who effectively run the IORP. Member States may allow that only one person effectively runs the IORP, on the basis of a reasoned assessment conducted by the competent authorities. That assessment shall take into account the role of social partners in the overall management of the IORP, as well as the ~~size~~, nature, scale and complexity of the activities of the IORP. Where there is potential or actual conflict of interest arising from the relationship between the IORP and the service provider of the IORP, Member States shall require that the persons who effectively run the IORP take independent decisions in the sole interest of members and beneficiaries.

▶ **Article 22 (requirements for fit and proper management)**

2. Member States shall ensure that the competent authorities are able to assess whether the persons who effectively run the IORP or carry out key functions fulfil the requirements laid down in paragraph 1 on an ongoing basis, and whether there are any actual or potential conflicts of interest and how these are prevented or managed.

▶ **Article 31 (outsourcing)**

5. Member States shall ensure that IORPs outsourcing key functions, the management of those IORPs, or other activities covered by this Directive enter into a legally enforceable written agreement with the service provider. Such agreement shall include a breakdown of direct and indirect costs ~~be legally enforceable~~ and shall clearly define the rights and obligations of the IORP and the service provider. In case of a potential conflict of interest with the service provider, IORPs shall document and implement procedures to prevent or manage conflicts of interest.

▶ **Article 49 (supervisory review process)**

1. [..]

The review shall take into account the circumstances in which the IORPs are operating, and, where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise the following elements:

- (a) an assessment of the qualitative requirements relating to the system of governance;
- (b) an assessment of the risks the IORP faces;
- (c) an assessment of the ability of the IORP to assess and manage those risks.

The assessments in points (b) and (c) shall take into account the risk of the IORP not having adequate financial resources to cover its current and future operating costs.

▶ **Article 50 (information to be provided to the competent authorities)**

(d) lay down which documents are necessary for the purpose of supervision, including:

[..]

(vii) business plans referred to in Article 9, detailing the financial resources available to the IORP to cover its current and future operating costs;

2.6. EFFECTIVE USE OF DATA

2.6.1. RELEVANT LEGAL PROVISIONS

Article 50 of the IORP II Directive ('Information to be provided to the competent authorities') provides that Member States shall ensure that the competent authorities, in respect of any IORP registered or authorised in their territories, have the necessary powers and means to:

- (a) require the IORP, the administrative, management or supervisory body of the IORP or the persons who effectively run the IORP or carry out key functions to supply at any time information about all business matters or forward all business documents
- (b) [..]
- (c) obtain the following documents: the own-risk assessment, the statement of investment-policy principles, the annual accounts and the annual reports, and all other documents necessary for the purposes of supervision;
- (d) lay down which documents are necessary for the purposes of supervision, including:
 - i. internal interim reports;
 - ii. actuarial valuations and detailed assumptions;
 - iii. asset-liability studies;
 - iv. evidence of consistency with the investment-policy principles;
 - v. evidence that contributions have been paid in as planned;
 - vi. reports by the persons responsible for auditing the annual accounts referred to in Article 29;

Article 60(3) of the IORP II Directive ('Cooperation between Member States, the Commission and EIOPA') specifies that the competent authorities of the Member States shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010 and shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010 (EIOPA Regulation), in accordance with Article 35 of that Regulation.

Article 35 ('Collection of information') of the EIOPA Regulation (EU) specifies that:

1. At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the duty in question.
2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

2.6.2. OTHER REGULATORY BACKGROUND

Since 2020, EIOPA receives annual and quarterly IORP information from NCAs. The reporting requirements, including data templates, are laid down in the Decision of the Board of Supervisors on EIOPA's regular information requests towards NCAs regarding provision of occupational pensions information (EIOPA-BoS/18-114⁸²), adopted in April 2018. An amended decision was adopted in June 2020⁸³. The amendments aligned, where relevant, the IORPs taxonomy with the Solvency II taxonomy to reduce the implementation costs of EIOPA, NCAs and IORPs linked to divergences in taxonomy, dictionaries and databases.

2.6.3. IDENTIFICATION OF THE ISSUE

The issue identified in this section is threefold:

1. Article 50 of the IORP II Directive empowers NCAs to collect data necessary for their supervision, but regular quantitative reporting is not explicitly mentioned. Consequently, NCAs are not always afforded the power at national level to independently decide on the content (e.g. data points, frequency) and submission deadlines of such regular quantitative data reporting of IORPs to the NCA.
2. EIOPA is afforded the power through article 35(2) of the EIOPA Regulation to collect information to be provided at recurring intervals and, where possible, in common reporting formats. Article 60(3) of the IORP II Directive requires NCAs to provide EIOPA with that information. However, some NCAs have indicated that the absence of a legal reference in IORP II complicates the implementation of EIOPA's request for regular IORP information, either with regard to delivering the data or delivering the data on time. In addition, a few NCAs have not been able to provide EIOPA with any of the information requested. This results in important data gaps, restricting EIOPA in fulfilling its duties.
3. NCAs in some Member States employ two lines of IORP reporting. One for the purposes of national supervision and one for the purpose of reporting to EIOPA. Their reporting requirements might be overlapping in terms of content but have different taxonomies and reporting deadlines. This double reporting imposes an unnecessary burden on IORPs.

2.6.4. ANALYSIS

Policy options

⁸² [EIOPA, BoS Decision on EIOPA's regular information requests towards NCAs regarding the provision of occupational pensions information, EIOPA-BoS-18/114, 10 April 2018.](#)

⁸³ [EIOPA, BoS Decision on EIOPA's regular information requests towards NCAs regarding provision of occupational pensions information, EIOPA-BoS-20/362, 2 June 2020.](#)

Option 0: No change

Option 1: Add empowerment for NCAs to collect regular data in the Directive

Under this option, an amendment is made to the IORP II Directive to specify that NCAs shall have the necessary powers and means to require regular reporting from IORPs, also allowing NCAs to collect the data identified by EIOPA to fulfil its tasks.

Specifically, under this option, article 50 of the IORP II Directive is amended by adding the following point (aa) after point (a):

(aa) require IORPs to submit regularly quantitative templates specifying in greater detail and supplementing the information contained in the reports referred to in points (c) and (d), including all information requested by EIOPA to carry out its duties.

Option 2: Delegation to EIOPA to develop draft implementing technical standards on IORPs minimum data reporting

Also under this option, an amendment is made to the IORP II Directive to specify that NCAs shall have the necessary powers and means to require regular reporting from IORPs. In addition, a delegation is included for EIOPA to define minimum reporting requirements by means of an implementing technical standard (ITS) to ensure that all NCAs can at least benefit from a minimum set of data which could also be provided to EIOPA to fulfil its tasks. The 2020 EIOPA BoS Decision on IORPs reporting shall be used as a benchmark for the development of the ITS.

Specifically, Article 50 of the IORP II Directive is amended by adding the following point (aa) after point (a):

(aa) require IORPs to submit regular quantitative templates specifying in greater detail and supplementing the information contained in the documents referred to in points (c) and (d).

EIOPA shall develop draft implementing technical standards on regular supervisory reporting with regard to the minimum scope, content, frequency and deadlines for the submission of the information to be submitted to the competent authorities referred to in the first paragraph.

EIOPA shall submit those draft implementing technical standards to the Commission by xx 20xx. Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

The second paragraph shall be without prejudice to the power of competent authorities to require IORPs to communicate on a regular basis any other information prepared under the responsibility of — or at the request of — the administrative, management or supervisory body of the IORPs.

Impact of the policy options

Option 1: Empowerment for NCAs to collect regular data		
Costs	Members	/
	IORPs	Increased compliance costs for IORPs in some Member States that are not yet required to submit regular data.
	NCAs	Increased data handling costs for NCAs in some Member States that do not yet collect regular data from IORPs.
	Other	/
Benefits	Members	Enhanced protection of members and beneficiaries in some Member States due to better availability of regular IORP data for supervision.
	IORPs	/
	NCAs	Enhanced supervision in some Member States due to better availability of regular IORP data. Better performance by EIOPA of its tasks due to more complete and timely data submissions.
	Other	/
Option 2: ITS on minimum reporting		
Costs	Members	/
	IORPs	Increased compliance costs for IORPs in some Member States that are not yet required to submit all regular data requested by EIOPA.
	NCAs	Increased data handling costs for NCAs in some Member States that do not yet collect all regular data requested by EIOPA. Loss of flexibility for EIOPA to amend its current reporting requirements and risk that the ITS would include less information than currently included in the BoS Decision on IORPs reporting.
	Other	/
Benefits	Members	ITS might trigger standardisation and consolidation between national and European reporting requirements reducing costs for IORPs which should ultimately benefit the members and beneficiaries.

	IORPs	ITS might trigger standardisation and consolidation between national and European reporting requirements easing the burden on IORPs.
	NCA's	Enhanced supervision in some Member States due to better availability of regular IORP data. Better performance by EIOPA of its tasks due to more complete and timely data submissions.
	Other	/

Comparison of policy options

Option 0 does not solve the issues identified, but it can be argued that the current legal basis in the EIOPA Regulation and the IORP II Directive is already sufficient and does not require further strengthening. An advantage of the no change option is that EIOPA (together with NCA's) retains flexibility and full control of regular information requests compared to the use of ITS.

Still, a number of NCA's highlighted that they do not have the power at national level to independently decide on the content (e.g. data points), its frequency and submission deadlines of regular data reporting of IORPs. In addition, a few NCA's stressed that the absence of a legal reference in IORP II complicates the implementation of EIOPA's request for regular IORP information.

Option 1 would provide an explicit legal basis as to the powers for NCA's to collect quantitative data at a regular basis. It also explicitly addresses the empowerment of the NCA's to request information from IORPs which has been requested by EIOPA from NCA's.

However, EIOPA notices that several years after implementation of its BoS Decision on IORPs reporting – requesting data needed to fulfil its duties – a few NCA's have not been able to submit any data, even if the NCA's had the power to collect the data and did not observe any legal obstacles.

Option 2 provides a more explicit legal basis as to the powers for NCA's to collect quantitative data on a regular basis. In addition, it encourages an effective use of IORP data by ensuring that NCA's have at least a minimum amount of quantitative data at their disposal to be detailed in the ITS. Building the ITS on EIOPA's data requirements should provide more certainty that EIOPA's data needs are available to NCA's and should not hamper the practical process and implementation.

EIOPA is of the view that the European requirements should be integrated in the national requirements or vice versa. However, an ITS specifying minimum reporting requirements itself cannot guarantee that reporting requirements for national and European data needs will be consolidated. It could provide a trigger for integration, but ultimately the decision to integrate the reporting requirements is with the NCAs.

In conclusion, considering that option 1 solves the most imminent issues and option 2 does not provide any guarantees for reporting consolidation, EIOPA advises implementing option 1 in the IORP II Directive.

2.6.5. ADVICE

EIOPA recommends amending the IORP II Directive in order to specify that competent authorities should have the necessary powers and means to request regular quantitative reporting from IORPs (Option 1).

For that purpose, the following point (aa) should be added after point (a) of Article 50 (Information to be provided to the competent authorities):

(aa) require IORPs to submit regularly quantitative templates specifying in greater detail and supplementing the information contained in the reports referred to in points (c) and (d), including all information requested by EIOPA to carry out its duties.

2.7. STANDARDISED RISK ASSESSMENT

2.7.1. RELEVANT LEGAL PROVISIONS

Articles 13-18 of the IORP II Directive lay down the minimum valuation standards and funding requirements. Chapter 1 of Title III of the IORP II Directive provides the requirements on the system of governance, including the risk-management system and the governance documents.

2.7.2. PREVIOUS EIOPA REPORTS

In 2016, EIOPA issued an Opinion to the EU institutions, advising that harmonised solvency rules should not be introduced in the IORP II Directive.⁸⁴ The DB IORP sectors in Member States are very

⁸⁴ [EIOPA, Opinion to EU Institutions on a Common Framework for Assessment and Transparency for IORPs, EIOPA-BoS-16/075, 14 April 2016.](#)

heterogeneous and experiencing varying challenges, making a one-size-fits-all solvency regime less effective. Instead, EIOPA recommends in the opinion to introduce a common framework for risk assessment and transparency for IORPs.

In 2019, EIOPA developed a comprehensive set of technical specifications for the valuation of the common balance sheet and the calculation of the standardised risk assessment⁸⁵ in order to implement the common framework in practice.⁸⁶

In the Opinion on the 2020 review of Solvency II, EIOPA reiterated its advice to introduce the common framework, also considering that some Member States, in particular FR and SE, were allowing insurance undertakings to transfer their occupational pension business to IORP vehicles as the possibility to make use of Article 4 of the IORP II Directive came to an end.^{87,88}

2.7.3. IDENTIFICATION OF THE ISSUE

The IORP II Directive takes a minimum harmonisation approach resulting in a wide variety of national valuation standards and funding requirements:

- ▶ Twelve Member States (DE, DK, FI, FR, GR, HR, NL, NO, PT, RO, SE, SI) have materially supplemented all or some of the funding requirements of Articles 13 to 18 of the IORP II Directive (see Table 2.2 in Annex 2 for an overview of national approaches to funding requirements and recovery plans);
- ▶ The 2019 IORPs Stress Test Report showed that (at the end of 2018) about half of IORPs used a fixed discount rate to value liabilities, a quarter the expected return on assets and the remaining IORPs used market swaps rates or yields on high-quality bonds. All in all, discount rates varied between 0.4% below the risk-free rate to 3.1% above the risk-free rate. The average discount rate of all IORPs amounted to 1.7% compared to a risk-free rate of 1.2%.⁸⁹

⁸⁵ [EIOPA, Principles and Technical Specifications for the Common Framework – Annex 1 to Opinion on the practical implementation of the common framework for risk assessment and transparency for IORPs, EIOPA-BoS-19-246, 10 July 2019.](#)

⁸⁶ [EIOPA, Opinion on the practical implementation of the common framework for risk assessment and transparency for IORPs, EIOPA-BoS-19-246, 10 July 2019.](#)

⁸⁷ See section 14.1 of [EIOPA, Opinion on the 2020 review of Solvency II, EIOPA-BoS-20/749, 17 December 2020](#) and [EIOPA, Background document on the opinion on the 2020 review of Solvency II, EIOPA-BoS-20/750, 17 December 2020.](#)

⁸⁸ Solvency II contains a transitional, allowing Member States to apply parts of the IORP II Directive as well as the Solvency I capital requirement to the occupational retirement business of insurance undertakings, but this transitional ended on 31 December 2022. The counterpart of this transitional in the IORP II Directive, Article 4, was not used anymore at the end of 2021. See section 1 ('Types of IORPs') in annex 1 ('Overview of the IORP market').

⁸⁹ See page 17-18 of [EIOPA, 2019 IORPs Stress Test Report, EIOPA-19/673, 17 December 2019.](#)

- ▶ The 2022 Climate Stress Test Report showed that the funding ratio based on national valuation standards (122.7% at the end of 2021) gave a more favourable view than the funding ratio based on common valuation standards (109.4%).^{90,91}

The absence of common valuation standards and capital requirements may jeopardise the protection of members and beneficiaries and the functioning of the internal market. National valuation rules and funding requirements that are not market-consistent and risk-based, prevent a comparable and transparent view of the financial situation of IORPs. Moreover, divergent funding requirements between IORPs in different Member States as well as between IORPs and insurers may result in unequal conditions of competition and regulatory arbitrage.

The heterogeneity in valuation standards also impairs the comparability of data on DB IORPs' liabilities which EIOPA receives as part of the regular IORP data reporting and uses in its (financial stability) assessments of the IORP sector.⁹²

2.7.4. ANALYSIS

In 2016, EIOPA issued an Opinion to the EU institutions, advising that harmonised solvency rules should not be introduced in the IORP II Directive. A one-size-fits-all solvency regime is less effective, given that the DB IORP sectors in Member States are very heterogeneous and experiencing varying challenges. Instead, EIOPA recommends in the opinion to introduce a common framework for risk assessment and transparency for IORPs.

EIOPA's opinion to the EU institutions constitutes a comprehensive recommendation, including advice on:

- ▶ frequency of the risk assessment: at least every three years, unless there is a significant change in the risk profile;
- ▶ proportionality: exemption for small IORPs, i.e. smaller than 100 members or EUR 25 million in assets⁹³, as well as the possibilities for NCAs to allow for simplifications;
- ▶ contents of the risk assessment report: most notably, the need to explain the:
 - differences between the national and common approach to valuing the balance sheet;

⁹⁰ The funding ratio of 109.4% based on common standards excludes security and benefit adjustment mechanisms. Including these mechanisms, the funding ratio amounted to 119.9% at the end of 2021.

⁹¹ See page 18 (common standards) and page 32 (national standards) of [EIOPA, 2022 IORP Climate Stress Test Report, EIOPA-BoS-22/551, 13 December 2022](#).

⁹² NCAs have to report market values for assets, even if national valuation standards impose approaches that are not market-consistent.

⁹³ EIOPA recommends making the small IORP threshold for the application of the standardised risk assessment consistent with the advice to increase the threshold for the small IORP exemption in Article 5 of the IORP II Directive.

- meaning of market values for sponsor support and benefit reductions relative to actual sponsor contributions and retirement benefits;
- ▶ public disclosure: possibility to exclude confidential/sensitive quantitative information (most notably on the sponsor) and the need for guidelines to ensure uniform application of such exclusions;
- ▶ supervisory powers: NCAs should have sufficient power to take supervisory actions based on the outcomes of the risk assessment;
- ▶ preparatory phase: IORPs and NCAs need (unspecified) time to implement the new reporting and risk assessment requirement.

Impact assessment

The aim of the common framework is to enhance transparency of the financial situation of DB IORPs as well as to foster risk management. The common framework will allow for a better understanding of the risks and vulnerabilities of DB IORPs, contributing to their resilience and sustainability and improving the protection of members and beneficiaries, preventing that shortfalls are shifted to future generations.

Moreover, a common approach to valuing assets and liabilities and measuring risks will also improve the functioning of the internal market. Such a "common language" will enhance supervisory coordination and contribute to identifying and preventing regulatory arbitrage. Not only within the IORP sector, but also cross-sectoral, i.e. between the insurance and IORP frameworks.

The comparable data resulting from that could be used in the regular IORP data reporting to EIOPA, even though it would then have to be clarified that the values reported would be values from the common balance sheet and not the national balance sheet underlying the funding requirements. The common market- and risk-sensitive DB IORP data would enhance the quality and scope of financial stability assessments. The common framework would also facilitate EIOPA pension stress tests, which make use of the common balance sheet.

Considering the measures included in the Opinion to ensure a proportionate application, EIOPA's impact assessment concluded that the benefits would outweigh the costs of the common framework.

2.7.5. ADVICE

EIOPA recommends that IORPs and supervisory authorities have a transparent view of the financial situation of IORPs that operate pension schemes which provide cover against biometric risk, or guarantee a given investment performance or a given level of benefits.

Therefore, EIOPA reiterates its opinion on a common framework for risk assessment and transparency for IORPs, that:

- ▶ harmonised solvency rules should not be introduced in the IORP II Directive at this point in time;
- ▶ a standardised risk assessment should be introduced based on a market-consistent balance sheet and common stress scenarios, in line with EIOPA's common framework for risk assessment and transparency, as suggested by EIOPA in its 2016 opinion to the EU institutions.

Some adjustments to the opinion on the common framework may be necessary to ensure consistency with potential advice on the IORP II review, for example, in relation to proportionality and the small IORP exemption.

EIOPA does not advise any change to the IORP II Directive in this area.

2.8. MISCELLANEOUS

This section discusses miscellaneous issues and options with regard to:

- ▶ Definition of sponsor;
- ▶ Investment rules relating to markets;
- ▶ Own-risk assessment.

2.8.1. DEFINITION OF SPONSOR

Relevant legal provisions

Article 6(3) of the IORP II Directive provides the following definition: 'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which offers a pension scheme or pays contributions to an IORP.

The definition of sponsoring undertaking is relevant for a number of requirements in the IORP II Directive, including:

- ▶ Article 8 on the legal separation between the sponsor and the IORP;

- ▶ Article 9 on the requirement on the sponsor to commit to regular financing if it guarantees the payment of retirement benefits;
- ▶ Article 11 on cross-border activity in order to define the host Member State;
- ▶ Article 12 on the requirement that the sponsor approves, if applicable, cross-border transfers;
- ▶ Article 15(1) on the requirement for IORPs to hold regulatory own funds, where the sponsor does not underwrite the liability or cover against biometric risk, or guarantees a given investment performance or a given level of benefits;
- ▶ Article 19(1)(g) on restrictions on IORPs' investments in the sponsor;
- ▶ Article 24(3) on the separation of key function holders of the IORP and the sponsor;
- ▶ Article 28 on the ORA in relation to the description of the prevention of conflicts of interests when the IORP outsources activities to the sponsor as well as to the assessment of protection mechanisms in relation to the sponsor;
- ▶ Article 39(1)(f) on the information in the PBS on contributions paid by the sponsor.

Identification of the issue

In at least two Member States (IE, PT) pension schemes can also be established by professional associations or bodies, including e.g. employees' unions, industry representative associations, professional bodies for regulated professions.

Analysis

Policy options

Option 0: No change

Option 1: Include not only employers, but also professional associations in the definition of sponsoring undertaking

Under this option, Article 6(3) of IORP II would be supplemented as follows:

- (3) 'sponsoring undertaking' means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer, a professional association or body, or in a self-employed capacity or any combination thereof and which offers a pension scheme or pays contributions to an IORP;"

Impact of the policy options

Option 1: include not only employers, but also professional associations in the definition of sponsoring undertaking		
Costs	Members	/
	IORPs	/
	NCAAs	/
	Other	Unforeseen and unintended negative impacts on national IORP systems.
Benefits	Members	/
	IORPs	/
	NCAAs	Legal clarity, e.g. in relation to the determination of the host Member State in case of cross-border activity.
	Other	Ensure that the definition of sponsoring undertaking explicitly refers to all relevant types of undertakings or other bodies that can assume the role of a sponsor.

Comparison of policy options

The current definition of the sponsor in IORP II already provides flexibility to include professional associations by specifying that sponsor means “any undertaking or other body [...] which acts as an employer [...]”. Indeed, at least two Member States have used this flexibility to accept professional associations as sponsors of IORPs. As such, the benefits of changing the definition are expected to be relatively small. EIOPA also considers that clarifying the situation in some Member States that professional associations can act as sponsor – e.g. for the purpose of cross-border activity – can be achieved through other means. At the same time, an amendment of the sponsor definition may have unforeseen and unintended consequences on the IORP systems in other Member States.

Advice

EIOPA considers the current definition of sponsor to be broad enough to encompass undertakings or other bodies, including professional associations or bodies, where, according to the organisation of the national pension system, such associations or bodies are allowed to offer pension schemes. Therefore, EIOPA recommends not changing the definition of sponsor.

Nevertheless, it could be clarified in the recitals that, according to national law in certain Member States, professional associations or bodies, including employees' unions, industry representative associations, professional bodies for regulated professions, may be considered to be sponsoring undertakings of IORPs.

2.8.2. INVESTMENT RULES RELATING TO MARKETS

Relevant legal provisions

Article 19(1)(d) of the IORP II Directive specifies that the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels.

Moreover, Article 19(6) of the IORP II Directive provides that Member States shall not prevent IORPs from investing up to 70% of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through multilateral trading facilities (MTF) or organised trading facilities (OTF), and deciding on the relative weight of those securities in their investment portfolio. However, provided that it is prudentially justified, Member States may apply a lower limit of no lower than 35% to IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and provide for the guarantee themselves.

Article 6(14) of the IORP II Directive defines 'regulated market' as a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU.

Recital (48) of the IORP II Directive clarifies that the Directive should ensure an appropriate level of investment freedom for IORPs. As very long-term investors with low liquidity risks, IORPs are in a position to invest in non-liquid assets such as shares and in other instruments that have a long-term economic profile and are not traded on regulated markets, MTFs or OTFs within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares in currencies other than those of the liabilities and in other instruments that have a long-term economic profile and are not traded on regulated markets, MTFs or OTFs should therefore not be restricted, in line with the prudent person rule so as to protect the interest of members and beneficiaries, except on prudential grounds.

Other regulatory background

Article 13(22) of the Solvency II Directive defines 'regulated market' as meaning either of the following:

(a) in the case of a market situated in a Member State, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC; or

(b) in the case of a market situated in a third country, a financial market which fulfils the following conditions:

(i) it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt on the regulated market or markets of the home Member State.

Identification of the issue

The definition of 'regulated market' in the IORP II Directive, in accordance with MiFID (Markets in Financial Instruments Directive), only covers financial markets in the Member States. This means that, according to Article 19(1)(d), IORPs' assets shall be predominantly invested in EU (regulated) markets. In practice, IORPs tend to diversify investments globally. For example, at the end of 2018, equity investments of IORPs were for 26% allocated to the EEA, 41% to the US, 17% to other developed countries and for 16% to emerging markets.⁹⁴ In addition, the current definition deviates from the definition in Solvency II, which allows for equivalent markets in third countries.

Article 19(6) of the IORP II Directive provides that IORPs should not be prevented from investing up to 70% of assets in securities admitted to trading on regulated markets, or through multilateral trading facilities (MTFs) or organised trading facilities (OTFs). Provided that it is prudentially justified, Member States may apply a lower limit of no lower than 35% to IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee. The provision suggests that regulated markets, MTFs and OTFs are treated the same way. However, this is not the case in Article 19(1)(d) of the IORP II Directive which specifies that the assets shall be predominantly invested on regulated markets, omitting MTFs and OTFs.

Analysis

Policy options

Option 0: No change

Option 1: expand definition of regulated market to include equivalent markets in third countries

Under this option, the definition of regulated market is expanded to include equivalent markets in third countries, in a similar way as in Solvency II:

⁹⁴ See [EIOPA, 2019 IORPs Stress Test Report, EIOPA-19/673, 17 December 2019](#).

“(14) ‘regulated market’ means either of the following:

- (a) a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;
- (b) a third-country market considered to be equivalent to a regulated market in accordance with Article 25(4) of Directive 2014/65/EU.”⁹⁵

Option 2: specify MTFs and OTFs in Article 19(1)(d)

Under this option, Article 19(1)(d) of the IORP II Directive is amended by adding specific references to MTFs and OTFs in the following way:

“the assets shall be predominantly invested on regulated markets, MTFs or OTFs. Investment in assets which are not admitted to trading on a regulated ~~financial~~ markets, MTFs or OTFs, must in any event be kept to prudent levels”

Impact of the policy options

Option 1: expand definition of regulated markets to include equivalent markets in third countries		
Costs	Members	/
	IORPs	/
	NCAAs	/
	Other	/
Benefits	Members	Ensures benefits of international diversification in terms of the risk-return characteristics of the investment portfolio, benefitting the protection of members and beneficiaries.
	IORPs	Legal certainty and consistency about ‘predominant’ investment universe.
	NCAAs	Legal certainty and consistency about ‘predominant’ investment universe.
	Other	/
Option 2: specify MTFs and OTFs in Article 19(1)(d)		
Costs	Members	/

⁹⁵ According to the Commission’s implementing decisions, markets in Australia ([Decision \(EU\) 2017/2318](#)), Hong Kong SAR ([Decision \(EU\) 2017/2319](#)) and the US ([Decision \(EU\) 2017/2320](#)) are currently considered to be equivalent to EU regulated markets.

	IORPs	/
	NCAAs	/
	Other	/
Benefits	Members	/
	IORPs	Legal certainty and consistency about the ‘predominant’ investment universe.
	NCAAs	Legal certainty and consistency about the ‘predominant’ investment universe.
	Other	/

Comparison of policy options

IORPs are currently required to invest their assets predominantly in EU regulated markets. Expanding the definition of regulated markets with equivalent markets in third countries (Option 1) and treating MTFs and OTFs in the same way (Option 2) would allow for increased benefits of (international) diversification and enhanced consistency within the IORP II Directive and with the Solvency II framework.

Advice

To allow for increased benefits of (international) diversification and enhanced consistency within the IORP II Directive and with the Solvency II framework, EIOPA advises to expand the definition of regulated markets with equivalent markets in third countries (Option 1) and afford MTFs and OTFs with the same treatment (Option 2).

For that purpose, point (14) of Article 6 (Definitions) should be amended as follows:

(14) ‘regulated market’ means either of the following:

(a) a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU;

(b) a third-country market considered to be equivalent to a regulated market in accordance with Article 25(4) of Directive 2014/65/EU.

In addition, point (1)(d) of Article 19 (Investment rules) should be changed as follows:

(d) the assets shall be predominantly invested on regulated markets, MTFs or OTFs. Investment in assets which are not admitted to trading on a regulated financial markets, MTFs or OTFs, must in any event be kept to prudent levels;

2.8.3. OWN-RISK ASSESSMENT (ORA)

Relevant legal provisions

Article 28 of the IORP II Directive requires IORPs to carry out and document their own-risk assessment (ORA).

Previous EIOPA reports

EIOPA's opinion on the use of governance and risk assessment documents in the supervision of IORPs⁹⁶ distinguishes between:

- ▶ The ORA policy, setting out the governance of the ORA process by clarifying the roles and responsibilities, also in relation to the IORP's risk management system;
- ▶ The ORA results report, containing the assessment, including its outcome, for each material risk identified in the ORA policy and any interdependencies.

According to EIOPA's opinion, the ORA policy may be formulated as a stand-alone document or integrated, for instance, in the risk management policy.

EIOPA's opinion also specifies that IORPs may prepare a risk appetite policy and risk tolerance statement as part of their governance and risk management practices.

Other regulatory background

Guideline 4 ('Policy for the ORSA') of EIOPA's guidelines on ORSA⁹⁷ provides that the AMSB of the undertaking should approve the policy for the ORSA. This policy should include at least a description of:

- a) The processes and procedures in place to conduct the ORSA;
- b) The link between the risk profile, the approved risk tolerance limits and the overall solvency needs;
- c) The methods and methodologies including information on:

⁹⁶ [EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19-245, 10 July 2019.](#)

⁹⁷ [EIOPA, Guidelines on own risk and solvency assessment, EIOPA-BoS-14/259, 14 September 2015.](#)

- i. How and how often stress tests, sensitivity analyses, reverse stress tests or other relevant analyses are to be performed;
- ii. Data quality standards;
- iii. The frequency of the assessment itself and the justification of its adequacy particularly taking into account the undertaking's risk profile and the volatility of its overall solvency needs relative to its capital position;
- iv. The timing for the performance of the ORSA and the circumstances which would trigger the need for an ORSA outside of the regular timescales.

Article 45(1)(a) of the Solvency II Directive specifies that the ORSA should include the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking.

Identification of the issue

IORPs need to have a clear and structured process in place approved by the management or supervisory body on how and when to carry out and document their ORA ('the ORA policy'). An ORA policy ensures that the ORA is conducted in an efficient and effective way, taking into account the governance and methodologies established by the management or supervisory body. The IORP II Directive does not specify such an ORA policy but restricts itself to the conduct and documentation of the ORA ('the ORA results report'). Nevertheless, in a number of Member States, the establishment of an ORA policy is already a requirement.

For risk management to be meaningful and for the management or supervisory body to be able to effectively control risks, IORPs also need to document their risk tolerance limits approved by the management or supervisory body. Risk assessment should compare the outcomes for each material risk with the relevant risk tolerance limits. Also the overall risk exposure should be related to the overall risk tolerance limits of the IORP. Where members and beneficiaries bear risk, the IORP needs to establish risk tolerance limits relating to the members and beneficiaries, taking into account their ability to bear risks and risk appetite. In contrast to the Solvency II Directive, the IORP II Directive makes no reference to risk tolerance limits. Still, in a substantial number of Member States, the consideration of the risk tolerance limits is already a requirement and/or common practice among IORPs.

Analysis

Policy options

Option 0: No change

Option 1: Introduction of ORA policy in IORP II Directive and its main elements

Under this option, the requirement to have an ORA policy in place would be introduced in the IORP II Directive, including a specification of its main components:

- ▶ to set the governance of the ORA process;
- ▶ to clarify the roles and responsibilities within the ORA process and in relation to the IORP’s risk management system;
- ▶ to describe the processes and procedures for conducting the ORA and future reviews;
- ▶ to identify all material risks to which the IORP is or may be exposed and associated risk tolerance limits;
- ▶ to highlight requirements on data quality;
- ▶ to indicate if the conduct of the ORA is (partly or fully) outsourced.

The ORA policy may be part of the IORP’s risk management policy or constitute a stand-alone document.

Option 2: Introduction of principle of ORA policy in IORP II Directive

Under this option, the principle to have an ORA policy in place would be introduced in the IORP II Directive without a list of the main elements. It would only be specified that the ORA policy should contain the processes and procedures for carrying out the ORA, the frequency of the ORA and the methods. The ORA policy may be part of the IORP’s risk management policy or constitute a stand-alone document.

Option 3: Provision in ORA to take into account the approved risk tolerance limits

Under this option, a provision would be introduced in the ORA that, in carrying out the risk assessment, IORPs should take into account the approved risk tolerance limits. Where members and beneficiaries bear risk, the risk tolerance limits from the perspective of members and beneficiaries should be considered, taking into account their ability to bear risk and their risk appetite.

Impact of the policy options

Option 1: Introduction of ORA policy in IORP II Directive and its main elements		
Costs	Members	/
	IORPs	Higher compliance costs for IORPs that do not have an ORA policy in place yet or do not include the main elements.
	NCAAs	/

	Other	Less flexibility for Member States to decide on how to implement the ORA policy due to the prescription of the main elements, which may also conflict with existing national practices.
Benefits	Members	Structured approach to risk assessment will benefit the protection of members and beneficiaries in Member States where the ORA policy is not yet a requirement or common practice.
	IORPs	Clarity on the elements that should be included in both the ORA policy and ORA results documents.
	NCAAs	Structured approach to the ORA will contribute to the quality of the risk assessment in Member States where the ORA policy is not yet a requirement or common practice.
	Other	/
Option 2: Introduction of principle of ORA policy in IORP II Directive		
Costs	Members	/
	IORPs	Higher compliance costs for IORPs that do not have an ORA policy in place yet.
	NCAAs	/
	Other	/
Benefits	Members	Structured approach to risk assessment will benefit the protection of members and beneficiaries in Member States where the ORA policy is not yet a requirement or common practice.
	IORPs	/
	NCAAs	Structured approach to the ORA will contribute to the quality of the risk assessment in Member States where the ORA policy is not yet a requirement or common practice.
	Other	/
Option 3: Provision in ORA to take into account the approved risk tolerance limits		
Costs	Members	/
	IORPs	Higher compliance costs for IORPs that do not yet establish risk tolerance limits approved by the management or supervisory body.

	NCA's	/
	Other	/
Benefits	Members	Enhanced protection of members and beneficiaries, especially where they bear risk, by requiring IORPs to take into account their ability to bear risk and risk appetite, in Member States where the consideration of risk tolerance limits is not yet a requirement or common practice.
	IORPs	Enhanced risk management by IORPs that do not yet consider the risk tolerance limits approved by the management or supervisory body and comparing those with the outcomes of risk assessments.
	NCA's	Higher quality of the ORAs submitted by IORPs in Member States where the consideration of risk tolerance limits is not yet a requirement or common practice.
	Other	/

Comparison of policy options

A structured approach to the ORA will benefit the quality of the risk assessment and the protection of members and beneficiaries. The assessment and management of risks will also benefit from comparing the risks with the risk tolerance limits established by the IORP’s management or supervisory body. Including detailed requirements, rather than principles, would conflict with the minimum harmonisation approach of the IORP II Directive and, hence, existing national practices, reduce flexibility at the national level and, potentially, result in disproportionate compliance costs. Therefore, EIOPA prefers to include a principle on the ORA policy (Option 2) as well as a principle on the consideration of the risk tolerance limits (Option 3).

Advice

In order to foster the protection of members and beneficiaries, EIOPA recommends enhancing the quality of the ORA, and the IORP’s risk management in general, by supplementing the ORA requirements with principles for an ORA policy (Option 2) and the consideration of the IORP’s risk tolerance limits (Option 3).

For that purpose, paragraph 1 of Article 28 (own-risk assessment) should be supplemented as follows:

1. Member States shall require IORPs, in a manner that is proportionate ~~to their size and internal organisation, as well as to the size,~~ nature, scale and complexity of their activities, to carry out and document their own-risk assessment.

That risk assessment shall be performed at least every three years or without delay following any significant change in the risk profile of the IORP or of the pension schemes operated by the IORP. Where there is a significant change in the risk profile of a specific pension scheme, the risk assessment may be limited to that pension scheme.

Member States shall ensure that IORPs establish a written policy for own-risk assessment containing the processes and procedures for carrying out the assessment, the frequency of the assessment and the methods.

In addition, point (i) should be added to Article 28(2) (own-risk assessment) as follows:

2. [..]

(h) where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change;

(i) an assessment of how the risks the IORP is or could be exposed to compare to the risk tolerance limits approved by the management or supervisory body of the IORP. Where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risks and risk tolerance limits from the perspective of members and beneficiaries should be considered, taking into account their capacity to bear risk and their risk appetite.

3. CROSS-BORDER ACTIVITIES AND TRANSFERS

3.1. EXTRACT FROM THE CALL FOR ADVICE

With a view to assisting the Commission in the preparation of its review of the IORP II Directive, EIOPA is invited to provide advice covering the following area:

1. *An evaluation of the implementation and effectiveness of the IORP II Directive in the areas set out in Article 62 of the Directive, including:*
 - b. *Cross-border activity and transfers. Facilitating the cross-border activity of IORPs and the cross-border transfer of pension schemes is one of the main legislative objectives of the IORP II Directive. For this purpose, the Directive provides specific procedures regulating cross-border activities (Article 11) and cross-border transfers (Article 12). EIOPA should assess the implementation and effectiveness of these rules and analyse obstacles where identified.*

3.2. IMPLEMENTATION AND EFFECTIVENESS

The IORP II Directive introduced enhanced procedures to facilitate cross-border activity of IORPs as well as cross-border transfers. EIOPA adopted the Decision on the cross-border collaboration of NCAs with regard to the application of the IORP II Directive to strengthen the cross-border collaboration between NCAs and to clarify and implement the procedures for cross-border activities and transfers.⁹⁸

EIOPA's 2022 report on cross-border IORPs⁹⁹ confirms the conclusion from the 2021 report¹⁰⁰ and the 2017 market development report¹⁰¹ (summarised in section 3.5) that the number of cross-border IORPs has not only stopped expanding since 2010 but has also recently dropped substantially (primarily due to Brexit). Moreover, the number of cross-border IORPs is not expected to grow substantially in the near future. One of the main reasons identified in the past was that the application of social and labour law (SLL) of the host Member States increases the costs, complexity

⁹⁸ [EIOPA, BoS Decision on the collaboration of NCAs regarding the application of the IORP II Directive, EIOPA-BoS-18/320, 27 September 2018 and EIOPA, Annex to the BoS Decision on the collaboration of NCAs regarding the application of the IORP II Directive, EIOPA-BoS-18/321, 27 September 2018.](#)

⁹⁹ [EIOPA, 2022 Report on cross-border IORPs, EIOPA-BoS-22/556, 16 December 2022.](#)

¹⁰⁰ [EIOPA, 2021 Report on cross-border IORPs, EIOPA-BoS-21/525, 3 December 2021.](#)

¹⁰¹ [EIOPA, 2017 Market development report on occupational pensions and cross-border IORPs, EIOPA-BoS-18/013, 30 January 2018.](#)

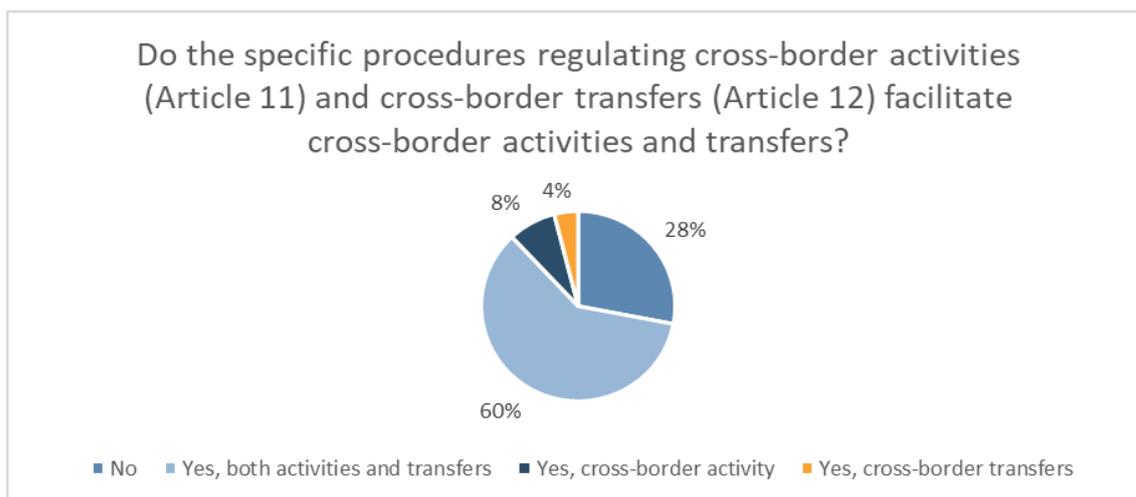
and operational risks of managing cross-border IORPs, thereby outweighing the benefits of operating a cross-border activity and reducing its probability of success.

3.2.1. EIOPA SURVEY ON IORP II REVIEW

EIOPA asked NCAs through the survey to provide feedback on the effectiveness of and their experience with the cross-border procedures and to identify any obstacles to cross-border pension provision by IORPs. Overall, the majority of NCAs responses indicated that they are happy with the way the cross-border provisions of the IORP II Directive and the associated supporting EIOPA decision are working. However, to caveat this, more than a third of respondents have indicated in the NCA survey that they have no experience with cross-border activity in their Member States and less have experience with transfers.

60% of NCAs consider that the existing procedures facilitate cross-border activities and transfers, while 8% consider that the existing procedures facilitate only the cross-border activities, 4% only cross-border transfers, and finally 28% that current procedures do not facilitate cross-border activities and transfers (see Figure 3.1).

FIGURE 3.1: EFFECTIVENESS OF PROCEDURES REGULATING CROSS-BORDER ACTIVITIES AND TRANSFERS, % NCAS



Of the NCAs that responded that the current procedures facilitate cross-border transfers and cross-border activities, some are of the view that current procedures are clear and understandable, and that without them there would not be an EU-wide uniform procedure. They believe the procedures are not complicated, nor do they lead to an overly onerous burden on IORPs that are interested in pursuing cross-border activities.

Six NCAs that responded that current procedures do not facilitate cross-border transfers or cross-border activities indicated that these procedures are complex and expensive. Four of these NCAs have experience with both cross-border activity and transfers.

One NCA noted that the system is difficult and that what would be needed is a “fundamental rethinking of the cross-border provisions, pointing to the disproportionate efforts by IORPs and the involved home and host supervisory authorities in order to make the cross-border activities possible often with a very limited scale of activity that is actually put in place”. Another NCA noted that a system of passporting or a lightened authorisation procedure for incidents, such as additional sponsors joining an IORP, is needed. Another NCA pointed out that “the deadlines set in Article 12(12) are not clarified and the time limits are not specified in cases where the transfer results in a cross-border activity or not. Also, in article 12 (10) it is not clarified whether in the event of failure to disclose the information referred in paragraph 5, the IORP, in addition to the possibility of appealing to national courts, may begin to execute the transfer and whether the transfer can be executed in the event of failure to act.” Finally, some NCAs hold the view that the procedures should be strengthened.

Overall, it is important to note that among all the responses, the majority of NCAs mentioned that they do not have any experience with cross-border transfers and more than a third do not have any experience with cross-border activity. Therefore, it remains difficult for some NCAs to evaluate this topic.

3.2.2. EXPERIENCE WITH CROSS-BORDER PROCEDURES

NCAs were asked if they have experience with cross-border activity and transfers in their Member State (see Figure 3.2A and 3.2B) and subsequently, for those that did, what is their opinion on how the current procedures stemming from the IORP II Directive are working (see Figure 3.3).

FIGURE 3.2A: EXPERIENCE WITH CROSS-BORDER ACTIVITY, % NCAS

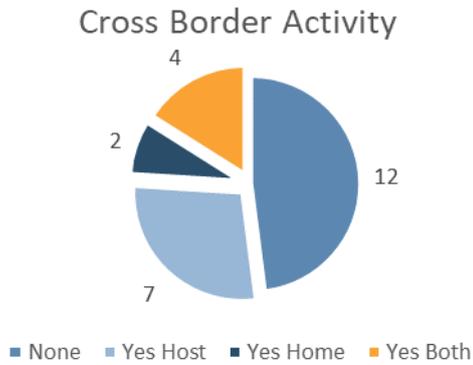


FIGURE 3.2B: EXPERIENCE WITH CROSS-BORDER TRANSFERS, % NCAS

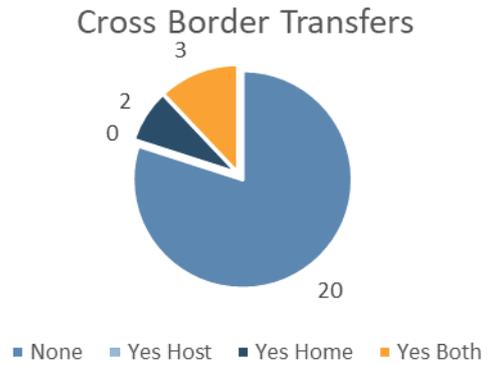
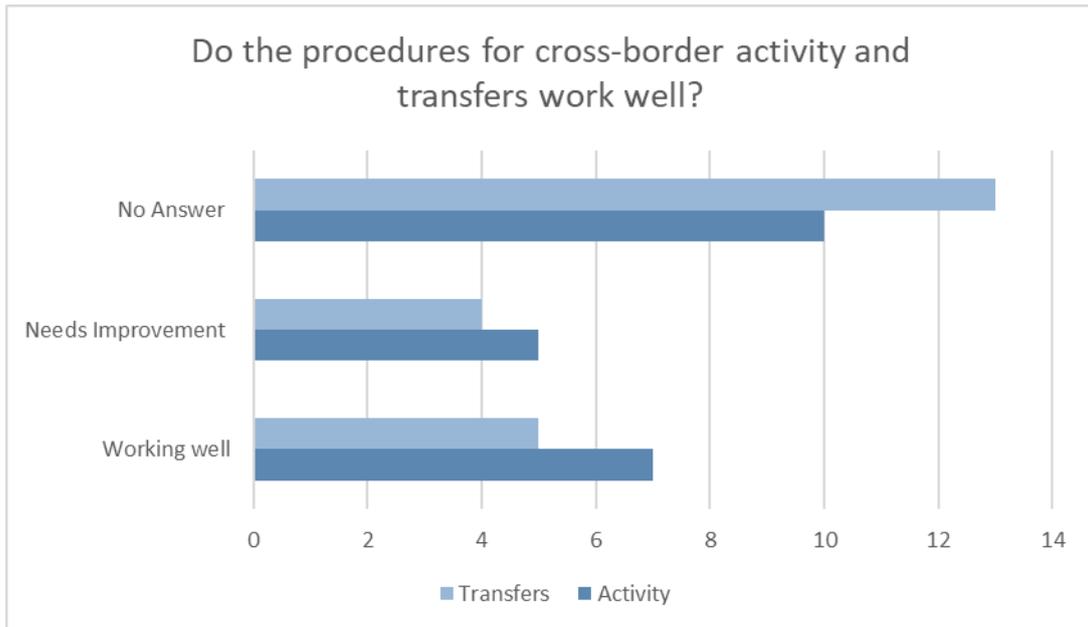


FIGURE 3.3: EFFECTIVENESS OF PROCEDURES FOR CROSS-BORDER ACTIVITY AND TRANSFERS, % NCAS THAT HAVE EXPERIENCE WITH CROSS-BORDER ACTIVITY AND TRANSFERS



The NCAs that indicated that change was needed to improve the procedures provided the following explanations:

- ▶ Clarity is needed regarding the definition of ‘the majority in accordance with national law’ for transfers. Specifically, it should be clear which Member State’s national law could define the majority, to avoid situations whereby the Member States involved in a transfer have different definitions of ‘the majority’. Given that ‘the majority’ refers to the members and beneficiaries, ‘the majority’ can (only) be defined in accordance with ‘the national law of the Member State whose SLL is applicable to the pension scheme to be transferred’.
- ▶ The notification requirements can be unnecessarily burdensome, and the procedure should be simplified. In particular, a simplified procedure could be considered for non-material amendments to a previously notified cross-border activity as well as a simplified procedure for the expansion of a previously notified cross-border activity with only one harmonised DC plan for all sponsoring companies.
- ▶ Cross-border transfers usually only take place when followed by a cross-border activity. Therefore, it would be better to determine one integrated procedure with a single assessment of the transfer and the activity by the NCA of the home/ receiving Member State.
- ▶ Clarification in cases where the 3-month deadline set out in Article 11(5) remains idle. More specifically, it should be clarified whether in the event of failure to disclose the information referred in paragraph 3, the IORP, in addition to the possibility of appealing to national courts, may begin to carry out the cross-border activity.
- ▶ Where there are ambiguities and incompatibilities in the terms of the pension scheme with the provisions of SLL of the host Member State, a procedure should be established to ensure that the IORP has implemented these provisions (before starting the activity).
- ▶ For Article 11(10) it should be made clear to the IORP or to the competent authority of the home Member State which NCA of the host Member State is supervising the activity/transfer.
- ▶ Clarification of article 11(2) and prior authorisation.
- ▶ The IORP II Directive could contain a provision for informing the NCA of the host Member State about the starting of the cross-border activity by the IORP.
- ▶ Clarity on which authority (home or host) is competent for the depositary requirement.

3.2.3. IDENTIFYING OBSTACLES

When asked to identify obstacles, the majority of NCAs (15) that responded said that they could not identify any. Most NCAs (8) stated that national SLL made activities and transfers complex. In addition, NCAs put forward the following obstacles:

- ▶ One NCA shared this question with their national stakeholders, of which only one responded that “It should be sufficient to notify the home supervisor when cross-border activity is started

and not on a case-by-case basis for each pension scheme”, which is a view shared by another NCA.

- ▶ One NCA made the point that “all ambiguities in the respective provisions should be removed, so that undoubtedly only authorised IORPs are allowed to operate cross-border. Otherwise, there will be an unlevel playing field between providers from different Member States”, also noting that all pan-European Personal Pension products (PEPPs) must be authorised.
- ▶ One NCA noted that the requirement to appoint a depositary is an obstacle for their national IORPs. This NCA also felt that the need for agreement from a majority of members and beneficiaries was burdensome as IORPs’ records are incomplete.
- ▶ Another NCA noted that the system was complicated and expensive which was turning off some IORPs. Two more NCAs remarked more generally on the complexity in the system.
- ▶ One NCA stated that the notification requirements can be unnecessarily burdensome.
- ▶ One NCA stated there is a lack of clarity about the interpretation of the fully funded requirement after launching a cross-border activity.
- ▶ NCAs from two large cross-border Member States noted there is a lack of clarity on the definition of the majority of members and beneficiaries, especially when they are not the same for internal (national) and cross-border transfers, and on the national law of which Member State is applicable in such cases.
- ▶ One NCA also noted there is a lack of confidence to manage pension assets outside one's own Member State, citing language and a lack of providers as reasons.
- ▶ One NCA noted that some IORPs need external consultants to help them understand and comply with the applicable SLL of other Member States.
- ▶ Another NCA expressed the view that a fundamental rethink of the system was needed and “...this may suggest, for example, the need for a viable business plan for cross-border activity to be presented by interested IORPs, with a scale of activity that justifies the costs to be incurred.”

3.3. RELEVANT LEGAL PROVISIONS

The cross-border procedures in Articles 11 and 12 of the IORP II Directive, together with other supporting articles within the Directive, aim to support the internal market for IORPs.¹⁰²

¹⁰² Articles 11 and 12 of the IORP II Directive replaced article 20 of the IORP I Directive, which originated from the 2000 action plan on “Implementing the framework for financial markets”. The Budapest protocol was adopted by CEIOPS (now EIOPA) members in 2009 to provide a framework for the cooperation of NCAs in relation to Article 20 of the IORP I Directive.

Article 11 of the IORP II Directive provides that, without prejudice to national SLL, Member States should allow an IORP registered or authorised in their territories to carry out cross-border activity. The stipulations that Article 11 puts on IORPs operating cross-border include that:

- ▶ an IORP shall notify its home NCA with specific information on the activity;
- ▶ there is a three-month window for the home NCA to issue a reasoned decision to refuse the proposed cross-border activity;
- ▶ otherwise, the home NCA must communicate within the three-month window the information received from the IORP to the host NCA;
- ▶ where the information is not communicated to the host NCA, the home NCA has to explain the reasons for this within the three-month timeframe with the non-communication being subject to a right of appeal for the IORP in the home Member State's judicial system;
- ▶ the IORP must abide by the stipulations set out by the host NCA on information requirements and, if applicable, depositary requirements;
- ▶ the host NCA must supply the home NCA with its SLL relevant to occupational pension schemes, depositary requirements (if relevant) and information requirements within six weeks of receiving the information from the home NCA and the home NCA will subsequently communicate this information to the IORP;
- ▶ the IORP may start to carry out the cross-border activity on receiving the communication from the home NCA or after the six weeks, if no communication is received from the home NCA;
- ▶ the host NCA will inform the home NCA of any legal changes to SLL, depositary requirements (if relevant) and information provisions requirements in their jurisdiction that may impact on the IORP's cross-border activity;
- ▶ the IORP will be supervised by the host NCA in respect of SLL, depositary requirements (if relevant) and information provisions requirements and by the home NCA in respect of prudential requirements. The home NCA, in coordination with the host NCA, shall take the necessary measures to put a stop to any detected breaches;
- ▶ within its area of competence, the host NCA may take appropriate measures, after informing the home NCA, to prevent or penalise persistent breaches.

Article 12 of the IORP II Directive provides that Member States should allow cross-border transfers by IORPs registered or authorised in their Member States. The remaining members and beneficiaries of the transferring IORP or the incumbent members and beneficiaries of the receiving IORP should not incur the cost of a transfer.

Transfers are subject to the approval from a majority of the members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives. The majority

shall be defined in accordance with national law and, if applicable, the sponsoring undertaking must also approve a transfer.

Transfers are subject to authorisation by the NCA of the home Member State of the receiving IORP after obtaining the prior consent of the NCA of the transferring IORP's home Member State.

Article 12 of the IORP II Directive lists the information that is required to make a transfer, as well as what the NCAs, of both the transferring and the receiving IORP, must consider in assessing the transfer. The NCA of the home Member State of the receiving IORP should forward the receiving IORP's application for a transfer to the NCA of the home Member State of the transferring IORP without delay following its receipt. The NCA of the home Member State of the transferring IORP has eight weeks to consider the transfer, so that the NCA of the home Member State of the receiving IORP can communicate its decision to the receiving IORP within three months of receipt of the application. The receiving IORP should have a right to appealing the decision in the courts of the Member State of the receiving IORP.

The NCA of the home Member State of the receiving IORP will inform the NCA of the home Member State of the transferring IORP of its decision within two weeks of taking that decision. Where the transfer results in a cross-border activity, the NCA of the home Member State of the transferring IORP shall inform the NCA of the home Member State of the receiving IORP within a further four weeks of the relevant SLL, depositary requirements (if relevant) and information provision requirements, which the NCA of the home Member State of the receiving IORP shall communicate to the receiving IORP within one week of its receipt.

The receiving IORP may start to operate the pension scheme upon receipt of a decision to grant authorisation, or if no information on the decision is received by the time the NCA of the home Member State of the receiving IORP should have communicated the relevant SLL, depositary requirements (if relevant) and information provision requirements to the receiving IORP.

In the case of a disagreement between the NCAs, EIOPA may carry out non-binding mediation upon request of either of the NCAs or on its own initiative.

Other articles in the IORP II Directive that have a direct reference to Article 11 and Article 12 on cross-border IORPs are:

- ▶ Article 9 on registration or authorisation;
- ▶ Article 14 on the funding of technical provisions;
- ▶ Article 19 on investment rules;
- ▶ Article 33 on the appointment of a depositary;
- ▶ Article 48 on the powers of intervention and duties of the competent authorities;

- ▶ Article 60 on the cooperation between Member States, the Commission and EIOPA;
- ▶ Article 62 on the evaluation and review of the Directive.

3.4. OTHER REGULATORY BACKGROUND

On 27 September 2018, EIOPA adopted the Decision on the collaboration of NCAs with regard to the application of the IORP II Directive¹⁰³, replacing the former Budapest Protocol. Its overall objective is to strengthen the cross-border collaboration between NCAs and to clarify and implement the procedures for cross-border activities and transfers described by the IORP II Directive.

On 12 November 2020, EIOPA issued a Supervisory Statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activity.¹⁰⁴ The statement aims to achieve supervisory convergence in the divergent approaches to assess if IORPs are prudentially sound to operate, both domestically and across borders. To that end, NCAs are expected to carry out a prudential assessment as part of the registration or authorisation process and continue to monitor the prudential soundness of IORPs as part of the SRP.

3.5. PREVIOUS EIOPA REPORTS

3.5.1. EIOPA 2022 CROSS-BORDER IORPS REPORT

The report shows that as of the end of 2021 there are 31 cross-border IORPs active.¹⁰⁵ This is two lower than the number reported as of the end of 2020 (further analysed below).

While the overall figure has decreased, there has been an expansion in the number of host countries with IT and SE added. BE remains the home Member State with the widest geographical spread of cross-border activities, covering 14 host Member States. BE is also home Member State to the majority of members and beneficiaries of cross-border IORPs. NL is most frequently the host Member State of active cross-border IORPs. There remained 14 Member States who do not benefit from internal market opportunities.

¹⁰³ [EIOPA, BoS Decision on the collaboration of NCAs regarding the application of the IORP II Directive, EIOPA-BoS-18/320, 27 September 2018](#) and [EIOPA, Annex to the BoS Decision on the collaboration of NCAs regarding the application of the IORP II Directive, EIOPA-BoS-18/321, 27 September 2018](#).

¹⁰⁴ [EIOPA, Supervisory statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activity, EIOPA-BoS-20/642, 12 November 2020](#).

¹⁰⁵ [EIOPA, 2022 Report on cross-border IORPs, EIOPA-BoS-22/556, 16 December 2022](#).

As of the end of 2021, cross-border IORPs have up to 2,261 sponsoring undertakings, around 93,000 members and beneficiaries and approximately EUR 13 billion in AuM. While these numbers have risen substantially compared to the figures in previous years, they represent just 0.2% and 0.4% of the total number of members and beneficiaries and assets of all European IORPs.

TABLE 3.1: HOME AND HOST MEMBER STATES OF CROSS-BORDER IORPS, END 2021

	Number	Name
Home Member State	7	BE, IE, DE, LU, LI, AT, CY
Host Member State	18	NL, IE, LU, DE, PT, CY, AT, BE, ES, MT, HU, DK, LI, LT, FR, EL, SE, IT

The vast majority of the assets (and liabilities) of cross-border IORPs can be attributed to IORPs with BE as home Member State. At Member State level (and individual level where available), all cross-border IORPs providing DB schemes had a positive funding ratio according to the prudential rules of the home Member State, although these ratios may potentially not be positive when using EIOPA’s common methodology (see section 2.7).

The report also notes that the number of cross-border IORPs used by multiple unrelated employers further increased and now covers almost half of the cross-border IORPs. In tandem, the number of sponsoring undertakings making use of cross-border IORPs has increased substantially compared to the previous year, which has repercussions in terms of the regulation and supervision of MIPs (see section 2.5).

Finally, the report highlights that there are almost no inactive cross-border IORPs remaining and that around 12% of cross-border IORPs do not provide any services in their home Member States.

3.5.2. 2021 CROSS-BORDER IORPS REPORT

The report shows that 33 cross-border IORPs were active in the EEA at the end of 2020.¹⁰⁶ This number represents a substantial drop compared to the 73 reported by EIOPA in 2017, primarily reflecting the UK’s departure from the EU. The 19 cross-border IORPs included in the 2017 report with home country UK and the 23 cross-border IORPs with sole host country UK (all with IE as home

¹⁰⁶ [EIOPA, 2021 Report on cross-border IORPs, EIOPA-BoS-21/525, 3 December 2021.](#)

country) are no longer recognised as cross-border IORPs under the definition given in the IORP II Directive for cross-border activity.

The 33 active cross-border IORPs had 1,554 sponsoring undertakings, approximately 70,000 members and beneficiaries and managed assets worth around EUR 11.3 billion. This represents 0.2% of all members and beneficiaries and 0.4% of total assets of IORPs in the region. The report shows that DB schemes were still widespread, while multi-employer cross-border IORPs were on the rise.

3.5.3. 2017 MARKET DEVELOPMENT REPORT ON OCCUPATIONAL PENSIONS AND CROSS-BORDER INSTITUTIONS

EIOPA's last report on the market development of IORPs, conducted before Brexit, demonstrated several important findings about the cross-border IORP market.¹⁰⁷ The report showed that over half of cross-border IORPs were jointly set-up by sponsors either active in financial and insurance activities or by sponsors active in manufacturing. The other half of cross-border IORPs have sponsors which operate their business in a multitude of sectors without any clustering in particular sectors.

The report also outlines reasons that European companies gave for not considering cross-border activity, which include:

- ▶ Lack of awareness of the existence of the current framework and the possibilities offered by the IORP II Directive to start a cross-border activity.
- ▶ Different maturities at a corporate level impacted centralisation of the management of employee benefits. Many plans to centralise are in development but not yet implemented.
- ▶ Lack of critical mass in terms of the number of people employed across the various EU locations. For these businesses, the costs of starting and sponsoring a cross-border IORP, on their own, would outweigh any benefits due to the lack of scale.

The report also outlines reasons provided by European companies for considering but not pressing ahead with a cross-border activity, which include:

- ▶ Length of the process. In addition, the IORP is required to start a new notification procedure for each new employer even if there is no change in the existing cross-border activity (see section 3.8).
- ▶ An overly onerous administrative process for starting a cross-border activity, due to a lack of information and transparency on the requirements to start a cross-border activity, often compounded by local resistance (e.g. local management, social partners).

¹⁰⁷ [EIOPA, 2017 Market development report on occupational pensions and cross-border IORPs, EIOPA-BoS-18/013, 30 January 2018.](#)

- ▶ Cross-border IORPs are not always the effective means to provide occupational pensions to their mobile employees, mainly due to scale and cost issues, including the need for retaining some local administration to ensure compliance with national SLL.
- ▶ Lack of sufficient scale to make the case for a cross-border activity worthwhile. For example, combining various schemes across Europe including the diversity in local SLL requirements could make for a complex and costly case whereby the benefits of operating a cross-border activity and probability of success may not outweigh the costs and risks.
- ▶ SLL requirements might have a prudential impact, making a cross-border activity a complex undertaking. For instance, national differences in governance requirements for minimum employee representation or requirements to appoint a pension administrator or investment manager locally in the host Member State can make the administration of a cross-border IORP costly.
- ▶ The lack of providers capable of single-handedly delivering services (e.g. pension administration, IT platform) covering all Member EEA countries. Those cross-border IORPs operating in several EU locations equally reported on resorting to more than one service provider which increases complexity and hence operational risks.

Ultimately the report found that the majority of European cross-border practitioners did not believe that the IORP II Directive would have significant impact on the future development of cross-border activities, mainly as a result of applying different SLLs locally.

3.6. PRUDENTIAL ASSESSMENT WITHIN THE PROCESS OF REGISTRATION OR AUTHORISATION

3.6.1. IDENTIFICATION OF THE ISSUE

Article 9 of the IORP II Directive states that “Member States shall, in respect of every IORP, the main administration of which is located in their territories, ensure that the IORP is registered in a national register, or authorised, by the competent authority”.

The terms “authorisation” and “registration” could be interchangeable depending on the practices at national level and in some instances the national processes mean the terminology is almost interchangeable as the IORPs receive the same robust supervision from the local supervisors. A small number of NCAs do not authorise IORPs and either register them initially and then conduct their prudential assessment, or, in a much smaller number of cases, NCAs may not carry out an assessment at all. As indicated in section 2.5.2. EIOPA issued a Supervisory Statement in 2020 on

the sound practices within the registration or authorisation process of IORPs¹⁰⁸. As part of this statement NCAs should conduct a prudential assessment regardless of whether IORPs have to register or authorise in their MS. EIOPA was aware that some NCAs did not conduct an assessment and so issued the Supervisory Statement, and since there is an arbitrage risk we should also seek clarification in IORP II Directive in addition to the Supervisory Statement.

In consequence, national requirements for the initial registration or authorisation of IORPs permitting IORPs to operate differ across Member States. In addition, there is the risk that supervisory approaches to assess if IORPs are prudentially sound to operate remain divergent across Member States and between domestic and cross-border IORPs in some circumstances. In the context of cross-border activity¹⁰⁹, such divergent approaches could lead to supervisory arbitrage and prevent a level-playing field across the EU that is conducive to a well-functioning internal market for IORPs, and they could jeopardise the adequate protection of the members and beneficiaries.

3.6.2. ANALYSIS

Policy options

Option 0: No change

Option 1: Introduction of a prudential assessment by NCAs as part of the registration or authorisation process of all IORPs pursuant to Article 9 of the IORP II Directive

Under this option, Article 9 ('Registration or authorisation') of the IORP II Directive is amended, requiring NCAs to carry out a prudential assessment of all IORPs as part of their registration or authorisation process, taking into account the nature, scale and complexity of the activities of the IORP, in line with EIOPA's Supervisory Statement on the sound practices within the registration or authorisation process of IORPs, as well as the advice provided in section 2.5.

NCAs should take into consideration not only the specificities of possible cross-border operations, but also the business plans of IORPs with respect to both domestic and cross-border operations. Moreover, NCAs should continue to monitor the prudential soundness of IORPs on an on-going basis in accordance with the supervisory review process set out in Article 49 of the IORP II Directive. This would ensure that any registered or authorised IORPs meet all the requirements of the IORP II Directive to operate both domestically and/or across borders.

Impact of the policy options

¹⁰⁸ [EIOPA, Supervisory statement on the sound practices within the registration or authorisation process of IORPs, including as regards suitability for cross-border activity, EIOPA-BoS-20/642, 12 November 2020.](#)

¹⁰⁹ Initiated and carried forward based on [EIOPA-BoS-18/320 Decision on the collaboration of the competent authorities with regard to the application of the IORP II Directive;](#)

Option 1: Introduction of a prudential assessment by NCAs as part of the registration or authorisation process of all IORPs		
Costs	Members	/
	IORPs	Higher compliance costs, where (potential) IORPs are not yet subject to the requirements of the NCAs prudential assessment. The additional compliance costs are mitigated by the proportionality measures accompanying the proposed requirements.
	NCAs	Higher supervisory costs for NCAs that do not carry out a prudential assessment within their registration or authorisation process.
	Other	/
Benefits	Members	Enhanced protection of members and beneficiaries where IORPs that do not meet the standards of the NCA's prudential assessment will not be registered or authorised.
	IORPs	Level-playing field as IORPs in all home MS will be subjected to a prudential assessment within the registration or authorisation process.
	NCAs	Supervisory convergence regarding the assessment of the soundness and stability of IORP during authorisation or registration, mitigating the risk of regulatory arbitrage, also in light of the 2021 EIOPA cross-border report that found that 12% of cross-border IORPs do not provide any services in their home Member State.
	Other	Improved functioning of the internal market due to convergence of the registration/authorisation process.

Comparison of policy options

The benefits of enhanced protection to members and beneficiaries, as well as the mitigation of regulatory arbitrage and a convergent approach at EU level, outweigh the potential costs, also considering the envisaged proportionate application of the requirements (see the comparison of policy options in section 2.5.4). Therefore, Option 1 is the preferred policy option.

3.6.3. ADVICE

In line with the advice on strengthening IORPs’ conditions of operation (see section 2.5.5), EIOPA advises for a change to Article 9 of the IORP II Directive requiring competent authorities to perform a prudential assessment as part of the registration or authorisation process of all IORPs (Option 1).

3.7. CROSS-BORDER TRANSFERS

3.7.1. IDENTIFICATION OF THE ISSUE

This section discusses the definition of majority for cross-border transfers between different IORPs, and by extension touches upon the subject of domestic transfers as well.

The IORP II Directive stipulates that the majority in relation to cross-border transfers shall be defined in accordance with national law. NCAs were asked through the survey how the majority of members¹¹⁰, for the purpose of cross-border transfers, is defined in their country and to explain how the rules for cross-border transfers differ from those for domestic transfers.

Most Member States make use of a simple majority definition, but a handful of Member States apply higher percentages, while other Member States do not define the majority (see Table 3.2).

TABLE 3.2: MAJORITY FOR CROSS-BORDER TRANSFERS DEFINED BY MS

Type of majority	No of MS	MS
Simple majority (or 50% +1)	13	AT, BE ^a , BG ^b , DK, FI, IE, LV, LI, LU, NO, PL, PT ^c and SE
75%	1	DE
70%	1	SI
66% (of those members that have responded to a request asking whether or not they agree with the cross-border transfer)	1	NL

¹¹⁰ Referring to members and beneficiaries, where applicable.

66% or majority of representatives of members	2	CY and MT
Not defined	5	CZ, ES, FR, IT and RO
No such transfers within the framework of domestic law exist, only transfers between providers at the will of individual savers, not the whole group.	1	SK
The majority is determined according to the statutory provisions of the IORP.	1	GR
<p>^a For BE self-employed plans - for employee pension plans the majority required for the conclusion of a collective labour agreement.</p> <p>^b BG has a separate ratio for when a separate part of the scheme is transferred and not the entire membership:</p> <ul style="list-style-type: none"> - 2/3 of all members whose individual accounts are transferred, - 2/3 of all members whose individual accounts are not transferred, - 2/3 of all pensioners whose individual accounts are transferred, and - 2/3 of all pensioners whose individual accounts are not transferred – for approval of transfer of part of the assets and liabilities of the occupational scheme. <p>^c For PT the prior approval is by simple majority or, if applicable, by the majority of its representatives, namely those who constitute the pension plan monitoring committee.</p>		

Majority definitions not only differ with respect to the percentage but also with respect to the basis. In some Member States a majority of all members need to approve, in other Member States it is a majority of members who have responded to the request. While most of the Member States use a simple majority, the heterogeneity of approaches means that some Member States will only look at those members that have responded to a request to approve the cross-border transfer, while in other Member States the majority of all members must explicitly approve the transfer.

A number of Member States (AT, BE, BG, DE, FI, LU, MT) stated they have the same threshold for domestic transfers as for cross-border transfers. Three Member States (ES, IT, RO) have no specific rule at national level on the majority required for the purpose of neither cross-border transfers nor of domestic transfers. Moreover, other Member States noted differences in national law between the definition of majorities for domestic transfers and the definition for cross-border transfers. For example:

- ▶ There is no threshold for domestic transfers in DK, IE, LI, LT and SK.
- ▶ Trade union or employee representatives can make the decision in SE at the general meeting.

- ▶ For domestic transfers in NL those members that oppose a transfer are excluded from the transfer (not so for cross-border). Members are only asked about their position towards the transfer in case of a transfer on request of the employer or in case of an internal transfer and not if the transfer is the result of a decision of the IORP's board to liquidate the IORP (a relatively common situation in NL).

In relation to domestic transfers, the majority of NCAs' responses indicated that members that do not respond to a request, whether or not they agree with the transfer, are usually being viewed as having approved the transfer. The exception being if the IORP has specifically identified that the transfer will only include those participants that explicitly approve the transfer.

Less demanding (majority) thresholds for domestic transfers between different IORPs represent an obstacle for cross-border transfers. I.e. all other things being equal, a transfer to a domestic IORP is more likely to succeed than a transfer to an IORP in another Member State. The differential treatment in some Member States – i.e. less stringent requirements on domestic transfers relative to transfers to another Member State – may also be in violation of the EU Treaty. According to case-law of the Court of Justice of the EU, any restrictions to the free movement of capital must be non-discriminatory, strictly proportionate and justified by imperative requirements in the general interest.¹¹¹

High absolute (majority) thresholds can also be considered to represent a barrier for cross-border transfers, but also for domestic transfers as well. For example, cross-border and domestic transfers are less likely to take place under a 75% majority than under a 50% majority requirement.

3.7.2. ANALYSIS

Policy options

To address the identified issues, policy options are analysed in relation to defining the majority for transfers between different IORPs.

Option 0: No change

Option 1: Uniform EU definition for the majority for cross-border transfers (simple majority)

Under this option, Article 12(3)(a) would be amended to introduce a harmonised definition of majority for cross-border transfers, respectively a simple majority. Since the majority would be defined at EU level, there would be no need to clarify which national law takes precedence. Within

¹¹¹ The fundamental Treaty "freedoms" consist of the free movement of people, goods and capital and the freedom to provide services. An "unjustified" restriction is a condition or prohibition imposed by the tax law of the EU country which cannot be justified by serious public interest considerations such as preventing tax fraud or keeping tax system consistent. (COUNCIL DIRECTIVE (EU) 2018/822) See some cases under EU law [here \(European Commission – Taxation and Customs Union – EU individuals rights under EU law\)](#).

the confines of this policy option, the majority rule applies only to cross-border transfers and does not affect national requirements existing for domestic transfers.

Option 2: Non-discriminatory definition of majority, i.e. the same for domestic and cross-border transfers, as well as clarification that national law of the host Member State takes precedence to define the majority for transfers

Under this option, Article 12(3)(a) of the IORP II Directive would be amended to ensure that the majority defined under national law for cross-border transfers should be non-discriminatory, i.e. be the same as the majority defined for domestic transfers. Moreover, it would be clarified that national law refers to the national law of the host Member State, i.e. the Member State whose SLL relevant to the field of occupational pensions schemes is applicable to the relationship between the sponsoring undertaking and the members or beneficiaries.

Option 3: Uniform EU definition for the majority for both cross-border and domestic transfers

Under this option, Article 12(3)(a) of the IORP II Directive would be amended to introduce a harmonised definition of majority, which would be applicable to both cross-border and domestic transfers. Since the majority would be defined at EU level, there would be no need to clarify which national law takes precedence.

Impact of the policy options

Option 1: Uniform EU definition for the majority for cross-border transfers (simple majority).		
Costs	Members	/
	IORPs	/
	NCA's	In instances where there is a difference between domestic and the uniform cross-border definitions, NCA's will have to be aware of the discrepancy to communicate it to IORPs that wish to operate cross-border.
	Other	Uniform approach to the cross-border majority definition prevents Member States to set the majority threshold taking into account national specificities.
Benefits	Members	Enhanced choice for members and beneficiaries in terms of access to the internal market where the current majority definition exceeds the new EU uniform definition.

	IORPs	Clarity regarding cross-border transfers and, depending on the uniform threshold, prevention of excessively high thresholds for cross-border transfers.
	NCA's	Enhanced clarity on the (uniform) definition of the majority for IORPs wishing to operate cross border.
	Other	Improved functioning of the internal market by ensuring that cross-border transfer rules are not excessively prohibitive.
<p>Option 2 - Non-discriminatory definition of majority, i.e. the same for domestic and cross-border transfers, as well as clarification that the national law of the host Member State takes precedence to define the majority for transfers.</p>		
Costs	Members	/
	IORPs	<p>Potential cost to IORPs in some Member State that:</p> <ul style="list-style-type: none"> ▶ would face a higher threshold for domestic transfers, e.g. where no majority is required right now; ▶ are now benefitting from an unlevel playing field with regard to domestic and cross-border transfers.
	NCA's	/
	Other	/
Benefits	Members	Enhanced choice for members and beneficiaries in terms of access to the internal market and clarity that their national law is relevant for defining the majority.
	IORPs	Level playing field with regard to cross-border and domestic transfers.
	NCA's	Enhanced clarity for NCA's on the national law that is relevant for defining the majority.

	Other	Improved functioning of the internal market by ensuring that transfer rules are non-discriminatory.
Option 3: Uniform EU definition for the majority for both cross-border and domestic transfers.		
Costs	Members	Depending on the threshold, members and beneficiaries may have less influence on potential threshold.
	IORPs	Potential cost to IORPs in some Member States that: <ul style="list-style-type: none"> ▶ would experience more difficulties in realising a domestic transfer; ▶ are now benefitting from an unlevel playing field with regard to domestic and cross-border transfers.
	NCAAs	/
	Other	Uniform approach prevents Member States to set the majority threshold taking into account national specificities.
Benefits	Members	Enhanced choice for members and beneficiaries in terms of access to the internal market.
	IORPs	Level playing field with regard to cross-border and domestic transfers and, depending on the uniform threshold, prevention of excessively high thresholds for transfers.
	NCAAs	Enhanced clarity on the (uniform) definition of the majority.
	Other	Improved functioning of the internal market by ensuring that transfer rules are non-discriminatory and not excessively prohibitive.

Comparison of policy options

If no change is taken, the hurdles to conducting transfers will remain and many will choose not to conduct a cross-border transfer, as we have seen to date, adding to the barriers that prevent the IORP internal market from opening up. Lack of clarity about which Member State law is relevant for

the majority definition means that NCAs will continue to be unsure on how to progress with transfers.

Moreover, based on the consultation feedback that EIOPA has received on this subject from national and EU wide stakeholders, most responded that a change was needed to Article 12 of the IORP II Directive to provide a clearer definition for the majority of members that needed to approve a transfer. None of the options set out for consultation was supported by a majority of stakeholders. Option 1 has received significant support from stakeholders' feedback, as did Option 2, however, this option did pose additional concerns (such as the necessity for a centralised register of different majorities or difficulties that would arise for the bulk transfer out of a failing IORP).

Given the benefits of clarifying the definition of a majority for cross-border transfers in a minimum harmonised manner at EU level, without further intervention with national principles applicable at Member State level for the domestic transfers, Option 1 is the preferred policy option (simple majority for cross-border transfers).

Furthermore, in order to adopt a harmonised approach at EU level for defining the majority of cross-border transfers, the determination of the basis to which the majority applies to is also an important aspect. Also, so as to ensure that a minimum number of members actively vote for the transfer, while allowing flexibility to address national specificities, each Member State would establish a minimum participation threshold of members and beneficiaries. However, the minimum participation threshold should not represent a barrier in itself for cross-border transfers and, as such, should not be set too high (up to 25% of members and beneficiaries). Member States should be able to use discretion to reduce this threshold for larger IORPs, if this would assist the IORPs in implementing the transfer.

3.7.3. ADVICE

EIOPA advises the introduction of a uniform EU definition for the majority for cross-border transfers in Article 12(3)(a) of the IORP II Directive (Option 1).

The transfer shall be subject to prior approval by:

(a) A simple majority of the members and beneficiaries concerned or, where applicable, a simple majority of their representatives. The simple majority of the members and beneficiaries concerned shall be calculated based on the received responses, whereby each Member State may establish a minimum threshold of up to 25% of members and beneficiaries for participation in the approval of the transfer. The information on the conditions of the transfer shall be made available to members and beneficiaries concerned

and, where applicable, to their representatives, in a timely manner by the transferring IORP before the application referred to in paragraph 4 is submitted; and

(b) the sponsoring undertaking, where applicable.

3.8. NOTIFICATION PROCEDURES

3.8.1. IDENTIFICATION OF THE ISSUE

A number of NCAs responded to the survey on the IORP II review that there is unnecessary complexity in the procedures, particularly in the notification procedures. Industry representatives have also made similar complaints (see section 3.2.3). While in streamlining the procedures in Articles 11 and 12 of the IORP II Directive there is a delicate balance between maintaining the primacy of SLL and ensuring the processes are straightforward, one potential avenue for change is with the notification procedures (Article 11(3) of the IORP II Directive).

3.8.2. ANALYSIS

Currently, any cross-border activity by an IORP requires notification to the home Member State. However, the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive stipulates that the home NCA can apply proportionality to the procedural requirements for cross-border activity in certain cases, such as the addition of an identical pension scheme in a multi-employer IORP.¹¹² Also, with regard to transfers, the BoS Decision recognises that the information exchange specified in Article 12(11) of the IORP II Directive is not necessarily applicable for all its components when the relevant SLL and information requirements, and, where applicable, the depositary requirements have already been communicated to the NCA of the home Member State of the receiving IORP under a previous notification process.¹¹³ For example, where the cross-border transfer concerns the accrued benefits on a given date of a pension scheme of which the future accruals are already operated by the receiving IORP. This change would have particular resonance for MIPs (see section 2.5).

¹¹² See paragraph 2.3.1.1 of the [Annex to the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive](#).

¹¹³ See paragraph 4.1.2 of the [Annex to the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive](#).

Policy Options

Option 0: no change

Option 1: a simplified notification procedure in certain instances

Under this option, a simplified procedure for pure DC schemes (where members and beneficiaries fully bear risks) is introduced for non-material amendments of a previously notified cross-border activity, as set out in paragraph 2.3.1.1 of the Annex to the BoS Decision, as well as a simplified procedure for the expansion of a previously notified cross-border activity with only one harmonised pure DC plan for all sponsoring companies. Since EIOPA does not intend on pursuing the inclusion of a DC scheme definition in the IORP II Directive, NCAs will evaluate at Member State level what schemes are considered as pure DC schemes.

Option 1: a simplified notification procedure in certain instances		
Costs	Members	/
	IORPs	/
	NCAs	Potential cost of changing some internal procedures.
	Other	/
Benefits	Members	More choice for members and beneficiaries, as a more streamlined notification process may encourage the uptake of cross-border IORPs.
	IORPs	Lower administrative burden for IORPs operating cross-border.
	NCAs	Lower administrative burden for NCAs working with cross-border IORPs, while not compromising on the quality of supervision.
	Other	/

Comparison of policy options

To enable a more streamlined process, Option 1 is preferred.

3.8.3. ADVICE

EIOPA advises to introduce a simplified procedure for schemes where members and beneficiaries fully bear risks in case of non-material amendments of a previously notified cross-border activity, as set out in paragraph 2.3.1.1 of the Annex to the BoS Decision EIOPA-BoS-18/320, and a simplified procedure for the expansion of a previously notified cross-border activity with only one harmonised plan where members and beneficiaries fully bear risks for all sponsoring companies.

3.9. SUPERVISORY COOPERATION

3.9.1. IDENTIFICATION OF THE ISSUES

EIOPA notes in the 2022 cross-border report that there are still instances of confusion among NCAs around what should be considered a cross-border IORP or activity. This confusion is also evident in how some NCAs responded to the survey that accompanies this review – some finding the system clear and workable while some found it complex and burdensome. The drafting of the EIOPA cross-border report can require clarification between EIOPA and NCAs as to their understanding of the activity of an IORP, as this may be different from one NCA to another, that is either home or host of the same IORP. While this confusion is not new, and the introduction of IORP II and the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive has greatly reduced inaccuracies in the definition of cross-border IORPs, it still remains.

3.9.2. ANALYSIS

The mixed responses in the survey – some NCAs citing that the procedures are clear and understandable while a minority (of mainly Member States that have experience with cross-border activity/transfers) stating they are cumbersome and complex – represents a microcosm of some of the issues EIOPA experiences in its measurement of the market. Complete clarity among NCAs has not been achieved on what constitutes cross-border activity and transfers. This is an element that will not need a change in the IORP II Directive, and closer communication should be pursued by EIOPA and NCAs in this regard. Either an amendment to the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive, a separate guidance document or training for NCAs is needed to assist NCAs in navigating the complexity they see in the system. This can be advanced at EIOPA level and should smooth out some of the issues experienced by NCAs and IORPs in operating cross-border, and as such no policy options are provided here. EIOPA proposes to organise an annual expert network meeting only with members representing the NCAs that are directly engaged with cross border IORPs, in order to explore and offer support on matters relating

to cross-border activities, including the exploration of methods of fostering cross-border activities and the internal market for IORPs.

3.9.3. ADVICE

EIOPA aims to further develop and enhance the current cooperative environment, particularly through the BoS Decision on the collaboration of NCAs with regard to the application of the IORP II Directive, and in particular with regard to the issue how NCAs are defining cross-border IORPs and interacting with each other. EIOPA expresses its commitment to further promote the internal market for IORPs and to explore cross-border issues and possible directions in offering solutions to these encountered issues.

3.10. POTENTIAL LEARNING FROM OTHER FRAMEWORKS

3.10.1. IDENTIFICATION OF THE ISSUE

From a supervisor's perspective the IORP II Directive is broadly doing what it is intended to do – providing an internal market for IORPs while protecting members and beneficiaries. This being said, the internal market is quite anaemic with cross-border activities now amounting to 0.2% and 0.4% of IORPs' total number of members and beneficiaries and assets. This tiny market share is considered a failure by industry representatives and from a European perspective cannot be portrayed as successful.

3.10.2. ANALYSIS

There is broad consensus that differences in national SLL increase the costs, complexity and operational risks of managing cross-border IORPs, thereby outweighing the benefits of operating a cross-border activity and reducing its probability of success.

Products such as the PEPP and the industry idea of a pan-European occupational pension product envision a pan-European market for pension provision through a so-called 2nd regime that exists side-by-side with national SLL and these should be considered. Another option would be a discontinuous approach and a reevaluation of the current cross-border philosophy towards IORPs. One NCA suggested through the survey a passporting system that currently exists for other financial products. Such thinking, beyond the current IORP II Directive, may be an approach to a more fully developed internal market for cross-border occupational pension provision and IORPs.

With the current anaemic internal market, members and beneficiaries lose out on scale and potential savings of access to a wider IORPs market. This is particularly salient considering the massive issues expected for future Europeans in retirement with the current lack of pensions

coverage. The complexity of the system is noted by both NCAs and the industry as a barrier. Not finding another way to foster an internal European market for pensions leaves the system to stagnate further. EIOPA has issued recent advice to the Commission regarding opportunities to help market participants navigate the complexities of the European pension landscape and have a better overview of their retirement prospects, such as the Technical advice on the development of Pension Dashboards and the collection of pension data¹¹⁴ and the Technical advice on the development of Pension Tracking Systems.¹¹⁵

It would be a missed opportunity not to use the review of the IORP II Directive to look at alternative solutions in order to grow the internal market for occupational pensions. If more options to grow the internal market are found, this would be a positive move for IORPs to expand and benefit, as other financial products have done in the past. For members, this broadens their options and scope for engagement with pensions saving, while for the EU economy, a robust internal pensions market contributes to the objectives of the Capital Markets Union (CMU).

3.10.3. ADVICE

There is clear evidence that the original purpose of the IORP II Directive, in terms of developing an internal market for cross-border IORPs, has failed. Incremental solutions, while removing some barriers, will not develop the system under the current framework to a genuine internal market for occupational pension provision. EIOPA advises that COM should explore frameworks beyond the IORP II Directive that may offer more potential to grow the internal market.

¹¹⁴ [EIOPA, Technical advice on the development of pension dashboards and the collection of pensions data, EIOPA-BoS-21/540, 1 December 2021.](#)

¹¹⁵ [EIOPA, Technical advice on the development of pension tracking systems, EIOPA-BoS-21-535, 1 December 2021.](#)

4. INFORMATION TO MEMBERS AND BENEFICIARIES AND OTHER BUSINESS CONDUCT REQUIREMENTS

This section of the advice covers the following aspects:

- ▶ It addresses issues concerning specifically the PBS since one of the main elements of the CfA is an evaluation of the functioning of the PBS (Section 4.2)
- ▶ Secondly, it discusses several aspects that relate to the PBS but also to the other information provided to prospective members, members and beneficiaries under Title IV of the IORP II Directive. This includes, for example, transparency on costs and charges and digitalisation (Sections 4.3-4.5).
- ▶ Thirdly, it considers the relevance of other types of business conduct requirements in the context of the shift to DC schemes (Section 4.6).

4.1. EXTRACT FROM THE CALL FOR ADVICE

With a view to assisting the Commission in the preparation of its review of the IORP II Directive, EIOPA is invited to provide advice covering the following area:

1. *An evaluation of the implementation and effectiveness of the IORP II Directive in the areas set out in Article 62 of the Directive, including:*
 - c. *The functioning of the Pension Benefit Statement. The purpose of the Pension Benefit Statement is to provide clear and comprehensive as well as relevant and appropriate information to facilitate the understanding of pension entitlements over time and across schemes. EIOPA should assess to what extent the current framework set out in Articles 38 to 40 of the Directive has delivered on these objectives including having regard to digitalisation and transparency of costs and charges.*
- [...]*
2. *Complementing the above analysis, an assessment of possible options in relation to the following areas:*
 - a. *Exploring the need for and possible ways to adapt the regulatory framework to the shift from Defined Benefit (DB) to Defined Contributions (DC) schemes: In many Member States, DB schemes are increasingly replaced by DC schemes. This results in a shift of the*

investment risk from pension providers to pension savers and an erosion of the collective level of protection in occupational pension systems. The analysis should evaluate whether the requirements under the existing legal framework under the IORP II Directive are still adapted to this reality. This part of the advice should also explore and evaluate the possible options in relation to the different types of DC scheme, i.e. on prudential, governance, and business conduct requirements, as well as requirements on information to members and beneficiaries. The Commission is aware that EIOPA has already carried out work on specific requirements of DC schemes under the existing legal framework. By issuing this call for advice, the Commission intends to build on that work.

4.2. PENSION BENEFIT STATEMENT

4.2.1. GENERAL EVALUATION OF THE FUNCTIONING OF THE PBS

The purpose of the PBS is to provide clear and comprehensive, as well as relevant and appropriate, information to facilitate the understanding of pension entitlements over time and across schemes. The quality and readability of information made available also contributes to public trust in the pension sector.

EIOPA's survey with NCAs showed that a considerable number of NCAs¹¹⁶ consider there is insufficient data to assess the effectiveness of the PBS and whether it provides clear and comprehensive information.

In general, NCAs have not conducted systematic evaluations of the functioning of the PBS due to the relatively short time frame since the national transposition. Most NCAs based their replies to EIOPA's survey on the lack of complaints or provided their evaluation of the effectiveness of the PBS based on their supervisory experiences. Overall, NCAs' evaluations of the functioning of the PBS are slightly positive.

A considerable number of Member States¹¹⁷ - go beyond the requirements in the IORP II Directive in their national legislation. There are very few additional requirements as regards DC schemes, but the prevalence of DC schemes varies substantially from one Member State to another¹¹⁸.

The PBS requirements in Article 39 have been supplemented most often, followed by the requirements on the general information on the pension scheme (Article 37), the general provisions

¹¹⁶ AT, CZ, DE, DK, ES, FI, IE, MT, NO, PT, RO and SE.

¹¹⁷ AT, BE, CY, ES, HR, IT, NL, PL, PT, SI and SK.

¹¹⁸ See chapter 5 for further details.

on the PBS (Article 38), and the requirements on the information to be given to members during the pre-retirement phase (Article 42).

As regards ways to improve the effectiveness of PBS, a couple of Member States consider that the PBS is already detailed, and the inclusion of substantial further information would raise more challenges related to its design and comprehensibility. The issues reported included that the member or beneficiary sometimes do not know where to find specific information in the PBS, and that the information may be too long, formulated in too general a way or using too much jargon, which decreases the comprehensibility and diminishes the degree to which members and beneficiaries can act upon that information.

Given the shift from DB to DC where members and beneficiaries will have increased financial responsibility and bear more risks, it becomes even more crucial to ensure the clarity and comprehensiveness of the information provided, and that it is provided at the right time and in the right format, so as to enable members and beneficiaries to engage and make decisions that lead to good outcomes in the long run. The information also needs to be accurate. A recent investigation by the Dutch AFM¹¹⁹ has shown that participants often receive incorrect information, and this could have major and far-reaching consequences.

In response to the EIOPA survey, several NCAs also underlined that information about the expected pension benefits and the volatility of variable benefits, including regarding variable benefits after retirement age are either insufficient or missing in the PBS (as well as in the other information provided to prospective members, members or beneficiaries) and that these are important for creating realistic expectations.

Members and beneficiaries need to be able to understand the long-term implications of variable benefits and how their ultimate benefits relate to the premiums or contributions that they have paid in over the years. They also need to understand the general relationship between the nature of financial risks and their pension benefits, and all types of disclosures should consider the financial literacy of the recipient. The IORP's investment policy may be difficult to understand so the relevant information needs to be included in the PBS or other information documents provided to (prospective) members or beneficiaries.

Considering the above, the IORP II Directive is not sufficiently covering aspects related to DC schemes and is not considered to have adequate provisions relating to the comparability, comprehensiveness and transparency of information and this has the potential to result in high detriment to members and beneficiaries. These issues and options to address shortcomings in the current Directive are discussed in the subsequent sub-sections.

¹¹⁹ See "[Correcte pensioenadministratie geen garantie voor correcte deelnemerscommunicatie](#)" (March 2022) (Dutch only)

4.2.2. PREVIOUS EIOPA REPORTS

EIOPA issued a Report on the Pension Benefit Statement in November 2018¹²⁰.

As a follow-up to this Report on the PBS, which covered guidance and principles based on current practices, EIOPA created two voluntary PBS models to provide NCAs with practical guidance on how to implement the PBS.¹²¹ The designs were developed specifically for DC schemes, in collaboration with the industry and a panel of consumers. The two-page short and concise designs intend to capture the attention of the member or beneficiary and provide the right amount of information. The main aspects of these models are:

- ▶ They are split into five sections each headed by a key question to the member or beneficiary;
- ▶ Difficult concepts such as costs and pension projections are presented in a way to help the member or beneficiary to process the information easily. PBS model 1 uses a weather scenario analogy to present the projections, whilst PBS model 2 uses a purse analogy;
- ▶ PBS model 1 presents the costs in a table format and PBS model 2 in a column format;
- ▶ The two models include a section on “What can you do to plan better your retirement?”, which provides the member or beneficiary with options for what they might be able to do.

EIOPA’s work in relation to the Regulation (EU) 2019/1238¹²² (PEPP Regulation) is also a relevant reference point. While there are differences between personal pension products and occupational pension schemes there are also important commonalities, in particular, for DC schemes.

Commission Delegated Regulation (EU) 2021/473¹²³, supplementing the PEPP Regulation, included a standard layout of the PEPP Benefit Statement (Article 11 and Annex II). EIOPA developed the template for the PEPP Benefit Statement, taking inspiration from the IORP II PBS models described above. The main changes to the designs were:

- ▶ The insertion of a QR code at the top of the document to allow digital access;
- ▶ The use of a narrative to describe the performance scenarios according to the performance of investments (poorly, medium success and very well);
- ▶ The use of a stack of coins as an analogy for the projection scenarios;

¹²⁰ [EIOPA report on the pension benefit statement: guidance and principles based on current practices](#)

¹²¹ [EIOPA, Model Pension Benefit Statements, 20 February 2020](#) and the [PBS models in Adobe InDesign format, 25 March 2020](#).

¹²² [Regulation \(EU\) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product \(PEPP\)](#).

¹²³ [Commission Delegated Regulation \(EU\) 2021/473](#).

- ▶ The use of a diagram for the presentation of Year -1 costs, including a mandatory breakdown by type of costs.

In addition, Commission Delegated Regulation (EU) 2021/473 sets requirements in relation to the layering of information. For the PEPP Benefit Statement, layer one concerns at least information on:

- ▶ The title of the document;
- ▶ The exact date to which it refers, details of the saver, the PEPP provider, the Member State of the PEPP and NCA;
- ▶ Information on pension benefit projections;
- ▶ Information on the contributions paid by the PEPP saver in Year -1.

4.2.3. RELEVANT LEGAL PROVISIONS

Article 38

General provisions

1. Member States shall require IORPs to draw up a concise document containing key information for each member taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law ('Pension Benefit Statement'). The title of the document shall contain the words 'Pension Benefit Statement'.
2. The exact date to which the information in the Pension Benefit Statement refers to shall be stated prominently.
3. Member States shall require that the information contained in the Pension Benefit Statement is accurate, updated and made available to each member free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually. A paper copy shall be provided to members on request in addition to any information through electronic means.
4. Any material change to the information contained in the Pension Benefit Statement compared to the previous year shall be clearly indicated.
5. Member States shall set out rules to determine the assumptions of the projections referred to in point (d) of Article 39(1). Those rules shall be applied by IORPs to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

Article 39

Pension Benefit Statement

1. The Pension Benefit Statement shall include, at least, the following key information for members:

(a) personal details of the member, including a clear indication of the statutory retirement age, the retirement age laid down in the pension scheme or estimated by the IORP, or the retirement age set by the member, as applicable;

(b) the name of the IORP and its contact address and identification of the pension scheme of the member;

(c) where applicable, information on full or partial guarantees under the pension scheme and if relevant, where further information can be found;

(d) information on pension benefit projections based on the retirement age as specified in point (a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the pension scheme;

(f) information on the contributions paid by the sponsoring undertaking and the member into the pension scheme, at least over the last 12 months, taking into consideration the specific nature of the pension scheme;

(g) a breakdown of the costs deducted by the IORP at least over the last 12 months;

(h) information on the funding level of the pension scheme as a whole.

2. In accordance with Article 60, Member States shall exchange best practices with regard to the format and the content of the Pension Benefit Statement.

Article 40

Supplementary information

1. The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

(a) further practical information about the member's options provided under the pension scheme;

(b) the information specified in Articles 29 and 30;

(c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;

(d) information on the level of benefits, in case of cessation of employment.

2. For pension schemes where members bear investment risk and where an investment option is imposed on the member by a specific rule specified in the pension scheme, the Pension Benefit Statement shall indicate where additional information is available.

4.2.4. STRUCTURE AND FORMAT OF THE PBS

Identification of the issue

The key role of the PBS is to inform members and beneficiaries about their current IORP savings and to answer the main question: 'how much did I save already?'. This question will mainly be answered by showing the accumulated entitlements (for DB schemes) or the currently accumulated pension pot or capital (for DC schemes).

The PBS should allow a member or beneficiary to assess a part of their financial situation and consider if there are any actions they should take. The information in the PBS should prompt the members and beneficiaries to address the question of whether they are saving enough during the accumulated period for an adequate pension.

After members and beneficiaries have undertaken retirement planning and are aware of whether the projected income is sufficient, they can make an informed decision on possible additional actions. Decisions are possible within the scheme, for example the level of contributions or the investment profile that the member or beneficiary has chosen, and outside of the scheme, for example whether to take up an additional pension product, to invest in reducing future expenditures or to postpone the retirement date.

In general, there is no uniform way of presenting the information in the PBS at Member State level which hinders comparability. Members of pension schemes should receive equivalent information, irrespective of who manages their pension plan.

Analysis

Policy options

Option 0: No change

Option 1: Principles-based requirements for the design of the PBS while taking into account the characteristics of the pension schemes (e.g. DB, DC)

The majority of national legislation transposing the IORP II Directive does not require IORPs to develop a standardised model in order to facilitate understanding and comparability, nor does it include further material additions as regards principles for the design of the PBS, such as layering of

information to specify which elements of the PBS should be part of the different layers¹²⁴ (e.g. “need to know” which is the first layer answering key questions vs “nice to know” items covered in subsequent layers).

The PBS should be comparable, to some extent, to information on other future retirement incomes, like the state pension (first pillar) and individual or personal retirement products (third pillar). This will make it easier for members and beneficiaries to get insight into their full retirement situation and allow them to undertake holistic retirement planning.

A starting point for developing principles for the design of the PBS is EIOPA’s Report on the PBS from November 2018, namely:

- ▶ The PBS design should consider the characteristics of the pension scheme (DB vs. DC, investment options);
- ▶ Information contained in a PBS should be comparable to other PBSs at national level;
- ▶ The PBS should be designed with a behavioural purpose and the information should respond to the member’s or beneficiary’s key questions. Member States and IORPs should engage with communication and behavioural finance experts when designing the PBS;
- ▶ The information should be layered to help the member or beneficiary find key information at a glance and navigate easily through the content to find answers to his/her questions;
- ▶ The use of layout tools should help design an effective, attractive, easy-to-read document;
- ▶ The PBS design should integrate and complement the communication tools that are in place in the Member States – such as the availability of an on-line pension dashboard or other pension communication channels to facilitate members’ and beneficiaries’ review and assessment of their full retirement situation.

Therefore, this option seeks to facilitate the clarity of information and comparability between different schemes regardless of the medium used, without prescribing or standardising the content or presentation of the information.

Option 2: EU level standardisation of the format of the PBS, taking into account the characteristics of the pension schemes (e.g. DB, DC)

There are no requirements in IORP II on a common format or template for the PBS. It is only stated that Member States should exchange best practices about the format and content.

¹²⁴ [Good practices on information provision for DC schemes](#) (January 2013) also known as the “[Max Report](#)” - layer 1 is must know, layer 2 is should know and layer 3 is nice to know.

Some Member States are using EIOPA’s PBS designs as examples and have an overall positive assessment of the models.

A standardised format or template could be developed at EU level based on EIOPA’s two PBS designs.

Option 3: Requirement for Member State level standardisation of the format of the PBS unless already achieved via a Pension Tracking System, taking into account the characteristics of the pension schemes (e.g. DB, DC).

This option consists of requiring that each Member State has a defined format or template for the PBS at national level to ensure comparability amongst different schemes available at national level without a prescribed EU template, unless such comparability is already achieved by via a national Pension Tracking System¹²⁵. This could be supported by the fact that five Member States¹²⁶ have national rules that already impose a common format of the PBS and by the EIOPA Model Pension Benefit Statements that have already been successfully used by some Member states.

Impact of the policy options

Option 1: Principles-based requirements for the design of the PBS while taking into account the characteristics of the pension schemes (e.g. DB, DC)		
Costs	Members	/
	IORPs	Implementation costs relating to the additional standards and expectations in the rules.
	NCAs	/
	Other	/
Benefits	Members	Improve the minimum standards reflecting developments and good practices since the implementation of IORP II.
	IORPs	Principle-based approach leaving Member State some flexibility to implement requirements tailored to the national specificities of the IORP sector and legal framework.
	NCAs	/

¹²⁵ [EIOPA, Technical advice on the development of pension tracking systems, EIOPA-BoS-21-535, 1 December 2021](#). Annex 1 of the advice provides an overview of existing Pension Tracking Systems.

¹²⁶ BE, IT, NL, RO and SK.

	Other	/
Option 2: EU level standardisation of the format, taking into account the characteristics of the pension schemes (e.g. DB, DC).		
Costs	Members	/
	IORPs	A change of structure or content of information documents is very costly for IORPs. Less flexibility to adapt to national schemes landscape.
	NCAAs	EU level template may not be compatible with existing national legislation/models resulting in implementation costs.
	Other	/
Benefits	Members	Ensure comparability at EU level allowing aggregation of pension benefit information from different providers, including on cross-border basis (e.g. for pension dashboards)
	IORPs	Some IORPs may appreciate the greater clarity on the appropriate format and structure of the PBS.
	NCAAs	/
	Other	/
Option 3: Requirement for Member State level standardisation of the format, unless a relevant Pension Tracking System is in place, taking into account the characteristics of the pension schemes (e.g. DB, DC).		
Costs	Members	/
	IORPs	Where this involves a change of structure or content of the PBS, this will be costly for IORPs to implement.
	NCAAs	/
	Other	/
Benefits	Members	Considering that most members and beneficiaries could accumulate pensions with several IORPs during their working career, this option should ensure comparability between PBSs at Member State level. It can also support aggregation of pension benefit information from different providers on a national level (e.g. for pension dashboards).

	IORPs	Some IORPs may appreciate the greater clarity on the appropriate format and structure of the PBS.
	NCA's	/
	Other	/

Comparison of policy options

The proposal is to introduce some additional principles regarding the design of the PBS (option 1) combined with Member State level standardisation of the PBS (option 3).

As most members or beneficiaries do not have a single employer (or accumulate a pension with one IORP) throughout their career, they could receive multiple PBSs with very different designs or approaches. To get an idea of their future retirement savings the information contained in a PBS should be comparable to other PBSs from other IORPs, unless such comparability is already achieved via a Pension Tracking System. Therefore, option 1 is not considered sufficient to provide the necessary level of comparability. However, even where a common format or template is set, some aspects of the structure or presentation may not be prescribed, such that option 1 is still relevant as well.

Option 3 is preferred to option 2 given that most EU citizens will only receive occupational pensions from IORPs in one Member State and thus standardisation at national level is more crucial than at EU level. It is also noted that some Member States already implemented standardised models of the PBS and could build on this existing experience. This could be supplemented by EIOPA developing guidance or using other supervisory convergence tools. Thus, good practices can be disseminated while, at the same time, it would leave Member States the necessary flexibility to adapt to the specificities of their national landscape.

Advice

EIOPA recommends amendments to Article 38 of the IORP II Directive to implement Options 1 and 3 as shown below. However, it is relevant to note that a material minority of members of EIOPA's Board of Supervisors did not support Option 3.

In addition, EIOPA recommends that the PBS should be designed with a behavioural purpose. Member States and IORPs should engage with communication and behavioural finance experts when designing the PBS. This principle could be reflected either in the recitals or in Article 38.

Article 38 General provisions

1. Member States shall require IORPs to draw up a concise document containing key information for each member. The document shall provide information on the level of risk borne by the member and take into consideration the specific nature of national pension systems and of relevant national social, labour and tax law ('Pension Benefit Statement'). The title of the document shall contain the words 'Pension Benefit Statement'.
2. The exact date or period to which the information in the Pension Benefit Statement refers to shall be stated prominently.
3. Member States shall require that the information contained in the Pension Benefit Statement is accurate, updated, consistent with the choices made and complete. To facilitate understanding, the information presented shall be layered and follow principles of good design [Please note that revisions to the current provisions in Article 38(3) on the availability and medium of the PBS are addressed in section 4.3.3 below.]
6. Member States shall specify the format and structure of the pension benefit statement to ensure comparability across different IORPs, while also taking into account the characteristics of different types of pension schemes.

4.2.5. INFORMATION IN THE PBS ON SUSTAINABILITY FACTORS

Identification of the issue

Disclosure to end users, including pension scheme members and beneficiaries on the extent to which investments take into account sustainability factors is crucial to support the EU's sustainable finance objectives¹²⁷.

SFDR¹²⁸ is a significant step forward in providing disclosure obligations for manufacturers of financial products and financial advisers toward end-investors. It does so in relation to the integration of sustainability risks by financial market participants (i.e. including IORPs) and financial advisers in all investment processes and for financial products, including occupational pension schemes that promote environmental or social characteristics or pursue the objective of sustainable investment.

¹²⁷ For example, see: [Renewed sustainable finance strategy and implementation of the action plan on financing sustainable growth \(europa.eu\)](https://european-council.europa.eu/media/e3000000/1/press/1618224/1618224_en.pdf)

¹²⁸ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

The disclosures required by SFDR are provided as part of the information to prospective members (Article 41, IORP II) and as part of the IORP's annual report (Article 29, IORP II). There are no requirements regarding the inclusion of such information in the PBS. Unlike the PBS, the annual report is not provided directly to members, rather it needs to be referred to in the PBS (Article 40(1)(b)) and provided on the request of the member (Article 44, point (a)). As a result, while prospective members will be provided with "pre-contractual" information on sustainability aspects in accordance with Article 6, SFDR, they may not consult the periodic reports in accordance with Article 11, SFDR contained within the IORP annual report.

Consequently, the relevance to draw attention to sustainability aspects also in the PBS can be considered. At a minimum, the PBS could contain a direct cross-reference to where more information can be found on sustainability aspects. Additionally, in view of the importance of sustainable investment, it could be considered to include key or very short-form information directly in the PBS, in order to increase the likelihood that members are informed regarding these aspects. At the same time, there can be challenges to identify what information would be appropriate to include in such a summary, as well as potential challenges for members to understand the information.

In this context, it can also be noted that there have been several recent developments concerning proposed or potential upcoming legislation relating to disclosures on sustainability. First, the Commission is currently undertaking a comprehensive assessment of the SFDR with a view to potentially making a legislative proposal in a next step. Second, the Commission's legislative proposals for their retail investment strategy include a proposal to introduce a new dedicated sustainability section in the PRIIPs key information document (KID) in addition to the disclosures required under SFDR. The proposed section in the PRIIPs KID intends to cover only the most crucial aspects, which are considered to be:

- ▶ the minimum proportion of EU Taxonomy-aligned investments¹²⁹;
- ▶ the expected greenhouse gas emissions associated with the product.

If this approach would be taken for the PRIIPs KID, this can be a relevant precedent also for the PBS. Overall, it would be preferable if any information included in the PBS would be consistent with, and could be drawn directly from, the information provided by IORPs under SFDR.

Analysis

Policy options

¹²⁹ Economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of [Regulation \(EU\) 2020/852 of the European Parliament and of the Council](#)

Option 0: No change

Option 1: Draw attention in the PBS to sustainability issues

This option consists of drawing attention to sustainability issues within the PBS. This could be done via including in the PBS at least a cross-reference to the disclosures required by SFDR. It could also be considered to include a very short summary or indication of sustainability aspects in the PBS itself as well as directing members to where additional information can be found. For any summary information, taking into account the potential legislative developments referred to in the previous section, the aim would be that any information would be consistent with, and could be drawn directly from, the information provided by IORPs under SFDR.

Impact of the policy options

Option 1: Draw attention in the PBS to sustainability issues		
Costs	Members	Implementation costs might result in higher costs to members.
	IORPs	Costs to implement additional disclosure. However, this should be limited given that the information would refer to or be drawn from the content of existing disclosures under SFDR.
	NCAAs	/
	Other	/
Benefits	Members	Members should be more aware of sustainability aspects in relation to their pension scheme.
	IORPs	IORPs are able to draw attention to their consideration of sustainability factors within the PBS.
	NCAAs	/
	Other	Should contribute towards sustainable financing objectives in terms of providing additional transparency and prominence to sustainability aspects. It can also complement the integration of sustainability preferences of members and beneficiaries (see section 6.6).

Comparison of policy options

EIOPA advocates the option consisting of drawing attention in the PBS to sustainability issues (Option 1).

The survey EIOPA conducted with the NCAAs indicated that there is currently only one Member State where it is required to include information on sustainability issues within the PBS. Therefore, it is

considered relevant to include this in the list of minimum information provisions for the PBS under the IORP II Directive.

Advice

EIOPA recommends drawing attention to sustainability issues within the PBS in a way that is consistent with the information disclosed under SFDR (Option 1). This could be done by including at least a cross-reference in the PBS to the information disclosed under SFDR. Taking into account the importance of the requirements in Article 36(2)(b), such as the use of ‘succinct and comprehensible language’, it could also be considered to include very short, key information on sustainability factors directly in the PBS. However, it is important to ensure the overall coherence of the sustainable finance requirements, as well as provide for appropriate consistency across sectors. In this context, EIOPA notes the recent legislative developments in this area including the comprehensive assessment of SFDR being conducted by the Commission and the retail investment strategy proposals, which can be relevant when considering any changes to the IORP II Directive.

4.2.6. OTHER CONSIDERATIONS REGARDING THE CONTENTS OF THE PBS

Identification of the issue

EIOPA’s work in relation to the PBS described above and the input from the survey to NCAs¹³⁰ indicates that there are other information items that are considered very relevant for members and beneficiaries in addition to the provisions currently in Article 39 of the IORP II Directive. This includes:

- ▶ Information on the performance of investments or investment returns for DC schemes. While Article 37(1)(g) of the IORP II Directive requires past performance information to be provided to DC members, it is not required in the PBS itself to show the investment performance. In the EIOPA model designs for the PBS it was considered relevant to show how the pension pot has changed over the past year, with a basic breakdown that should be understandable to members and beneficiaries, between contributions by the member and by the employer and the return on the investment.
- ▶ Where the member or beneficiary is able to make a choice between different investment options or funds, information on the nature of the options or funds in which they are invested.

¹³⁰ In response to the EIOPA survey with NCAs, BE, IT and NL responded that additional information is currently required to be included in the PBS.

Article 37(2) of the IORP II Directive requires general information to be provided on the range of investment options available, but it is not required to give any information about the nature of any investment options within the PBS. Drawing on the EIOPA design of the PBS model 2, it is considered useful to provide a brief reminder to the member of the nature of their investment selection. This could include information on the number of funds or options selected, the allocation between these options, i.e. proportion of assets invested in each of the options, and an indication of the risk level of the selection in summary form (i.e. on a basic scale such as low, medium, high or a number range). This point is also relevant more generally in the other information provided to (prospective) members and beneficiaries, since for pension schemes that offer choices regarding investments, the information provided needs to enable suitable choices to be made between the alternatives offered. This includes to compare the essential features of the options, such as risks, costs and returns, and be able to assess whether they can (financially) bear a decrease in benefits because of the potential for disappointing investment returns. Another element that can be relevant in this context concerns the additional focus that might be placed on sustainable investments or investment options (see also section 6.6. in the chapter on sustainability). While this is a positive development, there can also be some associated risks, for example if members or beneficiaries are drawn to sustainable investment options, but do not adequately consider the risks and costs. These aspects are further considered in Sections 4.4 and 4.5 below, in particular regarding costs and potential returns (projections), but it is also proposed to require specific information on risks levels.

Analysis

Policy options

Option 0: No change

Option 1: Include additional information items in the PBS

This option consists of including additional information items in the minimum content of the PBS set out in Article 39 of the IORP II Directive, including information on investment returns and a brief indication of the nature of the investment options currently selected.

Impact of the policy options

Option 1: Inclusion of additional information items in the PBS		
Costs	Members	Implementation costs might result in higher costs to members.
	IORPs	Implementation costs. However, the additional information proposed for disclosure should be readily available to the IORP.
	NCAAs	/

	Other	/
Benefits	Members	The option ensures that members receive these additional relevant information items and thereby should support members to make informed choices and further strengthen the protection of members.
	IORPs	Ensures IORPs are able to provide this relevant information within the PBS.
	NCAAs	/
	Other	/

Comparison of policy options

EIOPA advocates the option consisting of including additional information items regarding the minimum content of the PBS set out in Article 39 of the IORP II Directive (Option 1). Building on EIOPA’s work to develop the model PBS designs, this information is considered useful and relevant to members, and can be provided in summary form, therefore not unduly lengthening the document.

Advice

To implement option 1, EIOPA recommends the inclusion of new points in Article 39(1) along the lines of:

- information on the return on investments at least over the past 12 months where members bear investment risk;
- where members bear investment risk and are able to select between investment options, a brief indication of the investment selection made, including the number of options selected, the proportion of assets invested in each option and an indication of the risk level of the selection made in summary form.

4.3. DIGITALISATION

4.3.1. IDENTIFICATION OF THE ISSUE

New technologies are changing the way that information is provided to consumers, including (prospective) members and beneficiaries of occupational pension schemes. The CfA refers to

digitalisation in the context of evaluation of the PBS, however, digitalisation is also relevant for the other information requirements.

One aspect of digitalisation is the medium in which information is provided. The IORP II Directive prescribes that information documents should be made available through electronic means or on paper (Article 36(1)(f)). For the PBS, the IORP II Directive further specifies that a paper copy shall be provided to members and beneficiaries on request in addition to any information through electronic means (Article 38(3)). NCAs participating in the EIOPA survey have not identified any issues regarding the implementation of the requirements on the availability of information documents. However, it is relevant to reflect on the need to adjust the current approach, taking into account the digitalisation transformation, as well as the shift to a more “digital by default” regime in other EU legislative contexts.¹³¹

More broadly, digitalisation opens new possibilities for IORPs to reach out to their members through digital support, like a pension app, website of the pension provider, online tutorials, short videos and online calculators and may provide a more effective and engaging way of communicating.

The access to the digital technology brings many benefits in terms of tools, interactivity, simplicity and readily accessible information, but increased digital interactions also entail potential risks (e.g. cyber risks, data protection issues, etc.) and there is a risk of digital exclusion, limiting certain people’s access to essential information. If certain groups lack access to, or lack the necessary digital skills, inequalities and vulnerabilities could emerge. Elderly people may be particularly vulnerable in this regard. In most societies, digital exclusion is more prevalent among older consumers rather than their younger counterparts, as well as in rural rather than urban environments.

In this context, IORPs should be expected to carefully consider the format and nature of the communications sent.

Digitalisation also has significant implications for the context in which decisions are made. When members make choices, behavioural research shows that how choices are presented can have a strong effect on which choices are ultimately made.¹³² Trials show, for example, that default options have a strong effect; not very many people deviate from default options. It is important that any kind of choice environment is designed in a simple and supportive way for decision-making, while offering all the relevant elements for an informed decision, regardless of whether choices are

¹³¹ For example, in MiFID II – see [Directive \(EU\) 2021/338](#) of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis, (OJ L 68, 26.2.2021, p. 14). It can also be noted that it was stated in the [Joint ESA Report on Digital Finance](#) that EU financial regulation should not prevent financial institutions from providing pre-contractual and/or contractual information in electronic format.

¹³² The Dutch AFM has published (English) [reports](#) on the influence that consumer behaviour has, as well as (non-legally binding) principles for how firms may apply them.

presented on paper or digitally. The choice environment is even more relevant in the digital environment where people must find their own way to essential information. It is therefore important how choices are offered, how they are ranked, whether one is offered more prominently than others, what is the timing of the choice, etc.

4.3.2. ANALYSIS

Policy options

Option 0: No change

Option 1: For PBS and/or other documentation provide the member or beneficiary with the option to choose their preferred communication channel

This entails members or beneficiaries being asked to make a choice regarding their preference for how they receive the PBS document (e.g. through website, email, letter).

This compares to applying a default paper or default digital approach, whereby for example a certain communication format would automatically apply unless the member or beneficiary would specifically request a different communication format. Where it is not possible to obtain the preference of the member (e.g. where there is no response), a default format could then be applied, after reasonable efforts have been made to obtain the member's preference.

Option 2: Requirement to digitalise PBS and/or other documentation

This would mean all documents have to be available online and also in a printable and standardized format, even if a member or beneficiary has requested a paper copy or paper communication channel (which should remain possible as currently provided for in the Directive).

Option 3: Requirements regarding the appropriate choice architecture and overall presentation of information

As stated above, this option is not specific to digital disclosures but is particularly relevant in this context. Such requirements would involve IORPs considering the effect that the choice environment has on decision-making and ensuring that the environment or architecture contributes to suitable choices. It is proposed to have a principle-based requirement for IORPs to structure the information that they provide in a way that adequately guides members or beneficiaries when making choices, supporting them to make suitable choices. This would give IORPs some flexibility to implement the rules in a way that fits best their own pool of members' relevant characteristics, such as age, level of education, income etc.¹³³

¹³³ The Dutch AFM has published guidance on how IORPs should implement national rules in this area (Dutch only): <https://www.afm.nl/nl-nl/professionals/nieuws/2022/november/leidraad-keuzebegeleiding-pensioen>

Option 4: Enhance synergies between digital format of the PBS and other online communication tools that are in place in the Member States

This entails a general requirement being placed on Member States to facilitate synergies between the digital format of the PBS (provided by different IORPs and at different times / stages of the members'/ beneficiary's retirement planning) and the information available in other online communication tools that are in place in the Member States. A reference could be introduced in the PBS in relation to information available elsewhere.

Impact of the policy options

Option 1: For PBS and/or other documentation to provide the member or beneficiary with the option to choose their preferred communication channel		
Costs	Members	/
	IORPs	There may be additional costs involved in seeking the preference of members / beneficiaries where a default format has currently been applied.
	NCA's	/
	Other	/
Benefits	Members	Inclusive approach. Safeguards for the digital divide as regards access to internet and digital skills affecting in particular certain segments of population (i.e. elderly).
	IORPs	IORPs might benefit from the increased engagement of members / beneficiaries.
	NCA's	/
	Other	/
Option 2: Requirement to digitalise the PBS / other information documents		
Costs	Members	/
	IORPs	There may be implementation costs to provide all documents digitally, in particular where disclosures do not currently need to be provided online and where the member or beneficiary has selected to receive documents on paper.
	NCA's	/

	Other	/
Benefits	Members	Encourage use of digital solutions which can facilitate better possibilities to engage or contact scheme members.
	IORPs	Supports the use of new technology and enable innovation in pension communication.
	NCAAs	/
	Other	/
Option 3: Requirements regarding the appropriate choice guidance and overall presentation of information		
Costs	Members	/
	IORPs	There will be implementation costs, as IORPs would have to consider whether the current presentation of the choice guidance is appropriate and would have to make improvements where necessary.
	NCAAs	/
	Other	/
Benefits	Members	Improvements to choice guidance should make the presentation of the information more engaging / digestible and facilitate decision making leading to more suitable choices being made by members.
	IORPs	/
	NCAAs	/
	Other	/
Option 4: Enhance synergies between digital format of the PBS and other online communication tools that are in place in the Member States.		
Costs	Members	/
	IORPs	Implementation costs for IORPs.
	NCAAs	/
	Other	Implementation costs for Member States.

Benefits	Members	Information would be more accessible (irrespective of the member’s or beneficiary’s preferred means or portal for assessing information) and provide for consistency of information thereby reducing the risk of members or beneficiaries being confused. The various channels of communication will strengthen the outcome to be achieved, that should ultimately benefit the members and beneficiaries.
	IORPs	/
	NCA’s	/
	Other	/

Comparison of policy options

Regarding the options 1 and 2, EIOPA prefers an inclusive approach, that also takes into account vulnerable groups in the population. In some Member States, and some remote areas, internet access is scarce. Moreover, there are people, in particular belonging to certain age groups, that are less digital-savvy and unaware how to avoid scams or fraud etc. According to Eurostat data, in 2021, the share of people aged 16 to 74 who had at least basic overall digital skills was low in some Member States¹³⁴. Furthermore, the ergonomics of online platforms are not always adapted to elderly people. Consequently, in the context of occupational pension schemes, and for example compared to personal investment products where an active choice is made to invest, the preferred option is to request the member’s or beneficiary’s preferred format of receiving documents, rather than applying a more digital default approach (Option 1).

EIOPA additionally advocates options 3 and 4 (which are not mutually exclusive with each other or option 1) as these options are also considered to have significant benefits.

4.3.3. ADVICE

Digital disclosures offer great opportunities for presenting information in an engaging and simple manner. There are multiple advantages, for example, flexibility in the structure, which allows layering, and the application of interactive elements, such as infographics, videos and images. The use of such tools should aim at promoting good outcomes for members and beneficiaries and not seek to take advantage of behavioural biases.

¹³⁴ The lowest was in RO (28%), followed by BG (31%) and PL (43%).

At the same time, in order to avoid excluding vulnerable groups, it is important to seek the preference of the member or beneficiary on the way they are able to access the information.

EIOPA recommends the following amendment to the requirements concerning the availability and medium of the PBS in Article 38(3) of the IORP II Directive to ensure this is the case (Option 1):

“The Pension Benefit Statement shall be made available to each member free of charge on paper or through electronic means, including on a durable medium or by means of a website, at least annually, in accordance with the member’s preference. Preference shall be obtained at least at the beginning of membership. ~~A paper copy shall be provided to members on request in addition to any information through electronic means.~~”¹³⁵

In a digital context, it is particularly important that IORPs consider the effects that the choice environment has on decision-making and ensure that the environment or architecture contributes to suitable choices. It is proposed to introduce a general requirement (for example in Article 36) along the lines of “IORPs shall put in place safeguards such as choice guidance to support the member or beneficiary when making choices.” (Option 3).

In order to foster innovation and diversification of communication tools, while making sure that the relevant information reaches members and beneficiaries, Member States could be required to enhance synergies between the digital format of the PBS provided by different IORPs and at different times / stage of the members’ or beneficiary’s retirement planning and the information available through other online pension communication tools that are in place within the Member State. The list of supplementary information items referred to in the PBS in Article 40 should also include references to relevant online platforms or tools (Option 4).

4.4. TRANSPARENCY ON COSTS AND CHARGES

This section considers the information on costs provided in the PBS, as well as in the information provided to prospective members.

¹³⁵ [EIOPA, Report on the Pension Benefit Statement: guidance and principles based on current practices, November 2018](#)

4.4.1. PREVIOUS EIOPA REPORTS

In addition to the Report on the Pension Benefit Statement¹³⁶, which included a section on how to disclose costs in the PBS, EIOPA also subsequently published an Opinion on the supervisory reporting of costs and charges of IORPs.¹³⁷ Although this Opinion focused on the effective cost supervision of IORPs, it also considered issues relating to the disclosure of IORP costs more generally, including to members and beneficiaries, and this section of the advice draws substantially from the work conducted on the Opinion.

4.4.2. RELEVANT LEGAL PROVISIONS

Recital 63

Taking into account the nature of the pension scheme established and the administrative burden involved, IORPs should provide clear and adequate information to prospective members, members and beneficiaries to support their decision-making about their retirement and ensure a high level of transparency throughout the various phases of a scheme comprising pre-enrolment, membership (including pre-retirement) and post-retirement. In particular, information concerning accrued pension entitlements, projected levels of retirement benefits, risks and guarantees, and costs should be provided.

Article 37

General information on the pension scheme

2. Member States shall, in respect of every IORP registered or authorised in their territories, ensure that members and beneficiaries are sufficiently informed about the respective pension scheme operated by the IORP, in particular concerning:

...

(h) the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits;

Article 39

Pension Benefit Statement

(g) a breakdown of the costs deducted by the IORP at least over the last 12 months;

¹³⁶ [EIOPA, Report on the Pension Benefit Statement: guidance and principles based on current practices, November 2018.](#)

¹³⁷ [EIOPA, Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/426, 7 October 2021.](#)

Article 41

Information to be given to prospective members

...

3. Where members bear investment risk or can take investment decisions, prospective members shall be provided with information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years and information on the structure of costs borne by members and beneficiaries.

4.4.3. IDENTIFICATION OF THE ISSUE

The impact of costs can be very significant. Pension pots can end up much smaller than expected because investments carried higher costs than anticipated. The findings of the AFM report on 'Costs of pension funds need more attention' show that costs have a substantial influence on pensions.¹³⁸

Effective disclosure of costs is not only relevant within the PBS, but in relation to all of the potential choices made by prospective members. For example, where DC schemes offer members and beneficiaries the option to make choices in relation to how the contributions are invested, the information provided needs to enable members to make suitable choices between the alternatives that are offered, including the costs (as well as other essential features such as risks).

Therefore, the information on costs should aim at enabling (prospective) members and beneficiaries to understand the impact of costs on the evolution of their pension entitlements and to compare cost levels.

As shown in the previous section, the IORP II Directive introduced structural cost disclosure requirements for IORPs, both towards prospective and actual scheme members and beneficiaries. However, the IORP II Directive does not specify which costs should be covered, according to which criteria and how detailed the breakdown should be nor how the costs should be presented.

In contrast, other regulatory frameworks, such as MiFID II, IDD, PEPP or PRIIPs, provide more specific requirements. The cost information provided by IORPs, therefore, may not be:

- ▶ Complete – in the survey to NCAs, one NCA indicated that there are specific requirements in their Member States regarding costs being provided on a “look-through” basis¹³⁹. This is

¹³⁸ [AFM, Kosten pensioenfondsen verdienen meer aandacht, April 2011](#) (in Dutch).

¹³⁹ A “look-through approach” intends to make all the (investment) costs transparent, not only the costs paid for directly by the IORP, but also the costs of the underlying investment layers. This means that where an IORP invests through investment funds, the cost of these funds must be incorporated. Indeed, whether a cost is borne directly by the IORP, or indirectly via a lower asset value in the investment fund, the impact for the member is the same. See, page 18 of the Impact Assessment.

consistent with EIOPA’s analysis when preparing the Opinion on the supervisory reporting of costs and charges which found that, ‘In most Members States, costs reported in the annual accounts and communicated through the PBS are not subject to the look-through and no-netting approach’.¹⁴⁰ In addition, as stated in the Impact Assessment to this Opinion, the experience of NCAs shows that requiring cost transparency (reporting or disclosure) based on a look-through approach has a positive impact on the cost levels of IORPs as it drives costs down. For instance, in the Netherlands costs decreased up to 10 times compared to the cost levels before more transparent cost reporting was introduced;¹⁴¹

- ▶ Presented in a way that facilitates the understanding of the impact of costs on the pension and comparability of cost levels. The survey conducted with NCAs during the preparation of this advice, showed that the majority of NCAs have not developed additional rules to specify further the cost disclosure provisions in the Directive. Still, ten Member States have introduced specific rules, e.g. concerning the breakdown of costs to be shown in the PBS or the unit of cost disclosure (e.g. monetary or percentage amount).

4.4.4. ANALYSIS

Policy options

Option 0: No change

Option 1: Develop the provisions on cost transparency

This option consists of specifying further the provisions on cost disclosure drawing on the EIOPA Opinion on the supervisory reporting of costs and charges of IORPs and on the rules in other EU Regulations, including requiring the disclosure of indirect costs and of aggregate cost figures.

Impact of the policy options

Option 1: Develop the provisions on cost transparency		
Costs	Members	Potential risk that the additional information on costs is not understood by the member. However, this can be mitigated by providing some elements in a second layer (e.g. information on the different types of costs).
	IORPs	Implementation costs. This might require the collection of additional data. However, if this data is required to be collected for

¹⁴⁰ See page 18 of [EIOPA, Impact assessment - Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/427, 7 October 2021](#).

¹⁴¹ See page 6 of [EIOPA, Impact assessment - Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/427, 7 October 2021](#).

		supervisory reporting purposes (see section 5.5.2), the implementation costs would be more limited.
	NCA s	/
	Other	/
Benefits	Members	Improved awareness of the impact of costs on their retirement benefits and, where applicable, better able to compare between investment options. Increased transparency can result in a reduction in costs and higher pension benefits.
	IORPs	/
	NCA s	/
	Other	/

Comparison of policy options

EIOPA advocates to further develop the provisions in the IORP II Directive on cost transparency (Option 1). This is necessary to ensure that (prospective) members and beneficiaries have complete information on costs, are able to understand the impact of costs on the evolution of their pension entitlements, and are able to make relevant comparisons between different cost levels, such as between different investment options.

4.4.5. ADVICE

EIOPA recommends the following amendments to Article 39(1)(g) and Article 41(2) and (3) of the IORP II Directive to implement Option 1:

Article 39

Pension Benefit Statement

(g) ~~a breakdown of the costs deducted by the IORP at least over the last 12 months;~~

Where members bear investment risk or can take investment decisions, information on the costs imposed and their impact including:

- all costs incurred, directly and indirectly, by members and beneficiaries over the previous 12 months, indicating at least the costs of administration and the investment costs incurred in

connection with the management of assets and portfolio transactions. These costs shall be shown at least in monetary terms;

- an estimation of the impact of the costs on the final capital accumulated;

Article 41

Information to be given to prospective members

1. Member States shall require IORPs to ensure that prospective members who are not automatically enrolled in a pension scheme are informed, before they join that pension scheme, about:

(a) any relevant options available to them including investment options, and their risks;

[...]

2. Where members bear investment risk or can take investment decisions, prospective members shall be provided with the following:

(a) information on the past performance of investments related to the pension scheme for a minimum of ten ~~five~~ years, or for all the years that the scheme has been operating where this is less than ten ~~five~~ years;

(b) information on all costs to be borne by members and beneficiaries, comprising both direct and indirect costs, including the costs of each investment option separately, presented at least in monetary terms, and an estimation of the impact of the costs on the final capital accumulated; and

(c) information on the investment options available and their risks.

3. Member States shall require IORPs to ensure that prospective members who are automatically enrolled in a pension scheme are promptly after their enrolment, informed about:

(a) any relevant options available to them including investment options, and their risks and costs;

4.5. INFORMATION ON POTENTIAL RETIREMENT BENEFITS (PROJECTIONS) AND ON PAST PERFORMANCE

This section considers the information on projections provided in the PBS, as well as in the other information provided to (prospective) members and beneficiaries and information on past performance.

4.5.1. PREVIOUS EIOPA REPORTS

In addition to the Report on the Pension Benefit Statement¹⁴², which has a section on how to provide pension projections in the PBS, including the assumptions used and principles for communicating projections, EIOPA has also analysed the use of projections in a number of other reports.

In the Opinion on the supervision of long-term risk assessment by IORPs providing DC schemes¹⁴³, EIOPA addressed the use of projections as part of an IORP's risk management. In the Opinion it was stated, on page 3:

the expectations set out in this Opinion, including those on long-term pension projections, are made in the context of DC IORPs' risk assessment and not in relation to the provision of information to members. Still, the information contained in risk management documents, the statement of investment policy principles (SIPP) and information disclosure documents for members should be consistent

Furthermore, an important part of EIOPA's [advice](#) on PTS¹⁴⁴ concerned projections, given that an estimate of future retirement income is considered essential information for members and beneficiaries that needs to be included in any tracking system. The advice considered both the presentation of this information (e.g. Section 2.3 of the advice), as well as the data and assumptions underlying projections (e.g. Section 3.2.3) and various examples of the use of projections in existing tracking systems (e.g. in Annex 2).

Concerning information on past performance, this was one of the topics addressed in EIOPA's Report on other information to be provided to prospective and current members: guidance and principles based on current practices (March 2019)¹⁴⁵. The report set out seven principles for providing past

¹⁴² [EIOPA, Report on the Pension Benefit Statement: guidance and principles based on current practices, November 2018.](#)

¹⁴³ [EIOPA, Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes, EIOPA-BoS-21/429, 7 October 2021.](#)

¹⁴⁴ [EIOPA, Technical advice on the development of pension tracking systems, EIOPA-BoS-21-535, 1 December 2021.](#)

¹⁴⁵ [EIOPA, Report on other information to be provided to prospective and current members: guidance and principles based on current practices, March 2019](#)

performance to prospective members, for example that the information should be shown for an appropriate period of time.

4.5.2. RELEVANT LEGAL PROVISIONS

Article 37

General information on the pension scheme

1. Member States shall, in respect of every IORP registered or authorised in their territories, ensure that members and beneficiaries are sufficiently informed about the respective pension scheme operated by the IORP, in particular concerning:

...

(g) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years;

Article 38

General provisions

1. Member States shall require IORPs to draw up a concise document containing key information for each member taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law ('Pension Benefit Statement'). The title of the document shall contain the words 'Pension Benefit Statement'.

2. The exact date to which the information in the Pension Benefit Statement refers to shall be stated prominently.

3. Member States shall require that the information contained in the Pension Benefit Statement is accurate, updated and made available to each member free of charge through electronic means, including on a durable medium or by means of a website, or on paper, at least annually. A paper copy shall be provided to members on request in addition to any information through electronic means.

4. Any material change to the information contained in the Pension Benefit Statement compared to the previous year shall be clearly indicated.

5. Member States shall set out rules to determine the assumptions of the projections referred to in point (d) of Article 39(1). Those rules shall be applied by IORPs to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.

Article 39

Pension Benefit Statement

1. The Pension Benefit Statement shall include, at least, the following key information for members:

...

(d) information on pension benefit projections based on the retirement age as specified in point (a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the pension scheme;

Article 40

Supplementary information

1. The Pension Benefit Statement shall specify where and how to obtain supplementary information including:

...

(c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;

Article 41

Information to be given to prospective members

...

2. Where members bear investment risk or can take investment decisions, prospective members shall be provided with information on the past performance of investments related to the pension scheme for a minimum of five years, or for all the years that the scheme has been operating where this is less than five years and information on the structure of costs borne by members and beneficiaries.

4.5.3. IDENTIFICATION OF THE ISSUE

Information on the estimated benefits at retirement age is crucial to give citizens an insight into their retirement situation and to support them to make sensible decisions when such projections could have a substantial impact on their final pension.

The requirements in the IORP II Directive on projections do not provide substantive details on the nature of the assumptions to be used for pension projections, or on the approach and presentation to be used. For instance, it is only specified that where economic scenarios are used, a best estimate and favourable scenario shall be included.

The existing requirements also only address the use of projections in the PBS, while projections are also relevant in the information to prospective members and at the pre-retirement phase where there are variable benefits and investment risk is borne by the member or beneficiary. Disclosures about the variability of the benefits (e.g. with the use of projections) would aim to ensure that members and beneficiaries realise that the choice for a variable benefit has far-reaching implications, not only at the retirement date but also later in life.

EIOPA's work in this area has suggested the relevance to develop these requirements further, in order to ensure that members and beneficiaries are provided with appropriate information on their potential future retirement benefits.

Methodologies have been developed for performance scenarios or projections under the PEPP Regulation and PRIIPs Regulation, which apply to certain types of personal pension products.

EIOPA's Report on the PBS identifies various good practices regarding the nature of pension projections shown, such as the use of the real value to help members understand their purchasing power after retirement. In addition, in the advice on PTS, EIOPA recommends that data on projections should be composed of a best estimate scenario, a favourable and an unfavourable scenario.

The survey conducted by EIOPA as part of the preparation of this advice indicated a potential basis to further develop the requirements for projections, for example regarding the use of three scenarios.¹⁴⁶ At the same time, it also indicated, that a material number of NCAs have not developed substantial provisions in these areas¹⁴⁷, which can suggest the relevance to develop further the minimum standards in the Directive.

Concerning information on past performance, some respondents to EIOPA's public consultation argued that this information should cover a ten-year rather than only a five-year period. A ten-year period would be consistent with the time period used in other EU frameworks, such as for PEPP, PRIIPs and UCITS. In EIOPA's report on other information to be provided to prospective and current members, while a specific time period was not recommended, it was stated that information on past performance should be provided for an appropriate time period, which is long enough to

¹⁴⁶ Various responses indicated that at least three scenarios need to be used for projections which can be more meaningful and balanced than only showing two scenarios (AT, BE, ES, FI, LV and SK).

¹⁴⁷ It is understood that in at least seven countries (BG, LU, LI, NO, PO, PT and RO) no or only very limited rules have been implemented under Article 38(5) concerning the types of assumptions to be applied for projections.

contain both “good” and “bad” years. In this context, it was noted that there can be cases of extended periods of rising markets where “the representation of past performance over a period of only 5 years does not reflect accurately the performance”, such that it would risk being misleading.

4.5.4. ANALYSIS

Policy options

Option 0: No change

Option 1: Further develop the requirements on the approach to projections in the PBS

This option consists of drawing on existing EIOPA work in this area to adjust or further develop the existing requirements. This is proposed to include requiring the following elements:

- ▶ The inclusion of at least three scenarios, including favourable scenario as well as the best estimate and unfavourable scenario;
- ▶ Estimated retirement benefits are shown at least in real terms and this should be indicated in a narrative to support members and beneficiaries to understand their purchasing power at retirement;
- ▶ Where applicable, an indication that a variable retirement benefit can be chosen (with further information including projections being provided in the pre-retirement information as stated under option 2);
- ▶ Information on the projection assumptions being part of the supplementary information (Article 40) referred to in the PBS

Option 2: Require the use of projections where applicable in the information to prospective members and during the pre-retirement phase

This option involves new provisions requiring the information to prospective members to include projected benefits of different investment options, and the information during the pre-retirement phase to include projections where it is possible to opt for a variable annuity.

Option 3: Require past performance information to cover a minimum of 10 years

This option would require past performance information provided where members bear investment risk or can take investment decisions to cover a minimum of ten rather than five years.

Impact of the policy options

Option 1: Further develop requirements on the approach to projections		
Costs	Members	Potential for implementation costs to result in higher costs for members.
	IORPs	Implementation costs. However, the costs relating to this option are expected to be relatively limited given that it involves adjustments to existing requirements rather than imposing a new methodology (e.g. compared to Option 2).
	NCAAs	/
	Other	/
Benefits	Members	Supports appropriate information being provided on pension projections, allowing comparison between different options and supporting judgements by members on the need for adjustments, e.g. the level of contributions.
	IORPs	/
	NCAAs	/
	Other	/
Option 2: Require the use of projections where applicable in the information to prospective members and during the pre-retirement phase		
Costs	Members	Potential for implementation costs to result in higher costs for members.
	IORPs	There will be implementation costs where this information is not currently provided to prospective members or during the pre-retirement phase. However, given that projections already need to be provided within the PBS, this should involve building on existing systems.
	NCAAs	/
	Other	/
Benefits	Members	Ensure appropriate and reasonable information is provided on pension projections, allowing comparison between different options and between taking variable or fixed retirement benefits.
	IORPs	/
	NCAAs	/

	Other	/
Option 3: Require past performance information to cover a minimum of 10 years		
Costs	Members	In general, presenting members with additional data points can be considered a drawback. However, in this context, an increase in the time period shown is not considered to increase the complexity of the information.
	IORPs	There will be some costs to IORPs to prepare a revised presentation of past performance information. However, this is considered to be limited given that IORPs should already have the necessary data on past performance.
	NCAAs	/
	Other	/
Benefits	Members	Increases the likelihood that past performance information is provided over a sufficiently long period that contains both “good” and “bad” years and more generally to adequately indicate the possible volatility of returns.
	IORPs	/
	NCAAs	/
	Other	/

Comparison of policy options

The proposed options are not mutually exclusive and EIOPA advocates a combination of options 1, 2 and 3 given that for all of these options the expected benefits in terms of supporting members and beneficiaries being provided with appropriate information on their potential future retirement benefits are considered to outweigh the expected costs.

4.5.5. ADVICE

EIOPA recommends the following amendments to Articles 37, 39, 40, 41 and 42 the IORP II Directive and the inclusion of a new provision (Option 2):

Article 37

General information on the pension scheme (Option 3)

(g) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the pension scheme for a minimum of ~~five~~ ten years, or for all the years that the scheme has been operating where this is less than ~~five~~ ten years;

Article 39

Pension Benefit Statement (Option 1)

(d) information on pension benefit projections based on the retirement age as specified in point (a), and a disclaimer that those projections may differ from the final value of the benefits received, including, where applicable, that the retirement benefit may be variable. If the pension benefit projections are based on economic scenarios, that information shall include at least a best estimate scenario, a favourable scenario and an unfavourable scenario. The estimated future value of retirement benefits shall be shown in real terms together with a short narrative explanation ~~an unfavourable scenario, taking into consideration the specific nature of the pension scheme.~~ ;

Article 40

Supplementary information (Option 1)

(c) information about the assumptions used for the pension benefit projections, and where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;

Article 41

Information to be given to prospective members (Option 2)

2. Where members bear investment risk or can take investment decisions, prospective members shall be provided with the following:

- information on the past performance of investments related to the pension scheme for a minimum of ~~five~~ ten years, or for all the years that the scheme has been operating where this is less than ~~five~~ ten years;

- information on the risks and potential future benefits for each investment option

New subparagraph in Article 42: (Option 2)

Where one of the benefit pay-out options offered by the IORP is a variable annuity, the IORP shall provide each member, in due time before retirement age, with projections to illustrate the potential variation in the amount of the pay-out over time.

4.6. OTHER BUSINESS CONDUCT REQUIREMENTS

4.6.1. APPROPRIATE STRUCTURING AND IMPLEMENTATION OF THE SCHEME

Identification of the issue

MiFID, IDD and PEPP contain POG requirements to ensure that investment products, including personal pension products, are designed such that they are appropriate for, and serve the needs of, an identified target market.

Some of the principles of POG such as regarding a product approval process or the intended distribution strategy are not considered applicable to IORPs. However, other aspects, for example those referring more to the design phase, can be relevant also in the context of pension schemes. For example, that the scheme should be set up in a way that reflects the needs of the members and beneficiaries.

Equally, any related requirements for IORPs should consider and be adapted to the specificities of occupational schemes and the scope of the IORP II Directive. EIOPA also recognises that the pension landscape in the EU is heterogeneous. In particular, depending on the type of scheme, other entities besides the IORP, such as the employer or social partners, are usually responsible for the overall design of the pension scheme. There may also be collective bargaining partners bearing such

responsibilities. The IORP may be primarily a financing vehicle that is implementing an agreement between the employer and the employees.

In terms of the risk that the pension scheme does not reflect the interests of its members and beneficiaries, it is also recognised that the risk is generally different for other financial sectors, with protections in place in nationally applicable labour and social law. Most IORPs are pension institutions with the social purpose of providing retirement income to their members. This social function and the relationship between the employee, the employer and the IORP provide safeguards for the scheme being designed in a suitable way. However, there are also IORPs established by for-profit service providers, that are not founded by the employer, where there may not be the same safeguards in place to address conflicts of interest and ensure precedence is given to the interests of members and beneficiaries (see also Section 2.5 which addresses the management of conflicts of interest).

Notwithstanding the potential existing safeguards and the limitations on the design responsibilities of IORPs, EIOPA considers that it is relevant to introduce proportionate and principles-based requirements to ensure that in all cases, irrespective of the national specificities and type of scheme, schemes are as suitable to the members' and beneficiaries' needs, characteristics and risk profiles as possible.

The provisions could address the appropriateness of the choices made by the IORP when structuring or implementing the pension scheme to ensure that the scheme matches the members' and beneficiaries' needs, characteristics and risk profiles.

The implementation of the pension scheme in terms of the specific investments selected is governed by existing rules, most notably in Article 19 of the IORP II Directive. It is also separately being considered as part of the long-term risk assessment using pension projections (see section 5.5.1) how to ensure that IORPs reflect the risk tolerance of their members when determining the investment strategy.

Consequently, new requirements would aim at the other or broader choices made by IORPs. One example can be the assessment of which default option is most likely to be suitable for members and beneficiaries, given their relevant characteristics. Other aspects can include the assessment of the appropriate degree of investment freedom or choice offered to members and beneficiaries (if any), the number and types of investment options available, as well as the types of pay-out options offered.¹⁴⁸

¹⁴⁸ It is recognised that some of these elements may also be defined at MS level through SLL or be the responsibility of other entities than the IORP.

The application of the provisions could vary depending on the specific national or scheme context and the scope of IORP’s responsibilities. Where the IORP’s responsibilities are more limited, the provisions would have a narrower scope of application. Equally, where there are existing safeguards in place, it may not be necessary for the IORP to set up additional procedures or steps to ensure that the needs of members and beneficiaries are appropriately reflected.

Analysis

Policy options

Option 0: No change

Option 1: Introduce requirements to provide for the appropriate structuring and implementation of the pension scheme by the IORP

Such requirements could be principles-based and cover the appropriateness of the choices made by the IORPs when structuring and implementing the pension scheme. The application of the provisions would vary depending on the scope of IORP’s responsibilities. The requirements could cover the following elements:

- ▶ The appropriateness of the choices made in view of the identified needs and characteristics of members and beneficiaries;
- ▶ The related internal procedures, including documentation of the choices made and their rationale;
- ▶ The regular review of the appropriateness of the choices made, taking into account any material developments.

Impact of the policy options

Option 1: Requirement regarding appropriate structuring and implementation of schemes		
Costs	Members	Implementation costs may result in higher costs for members.
	IORPs	Implementation costs to develop processes to ensure the appropriateness of the choices made when structuring and implementing the pension scheme.
	NCAAs	Additional resources may be needed to apply new requirements.
	Other	/
Benefits	Members	Members should benefit from the pensions scheme being structured and implemented in a way that reflects their interests and needs.

	IORPs	/
	NCAAs	/
	Other	/

Comparison of policy options

EIOPA considers that the benefits of option 1 outweigh the costs, given the importance of pension schemes reflecting the interests, characteristics, needs and risk profile of their members and beneficiaries.

Advice

It is recommended to introduce new provisions in the IORP II Directive, taking into account the scope of the IORP’s responsibilities and acknowledging in particular the primary responsibilities of social partners and sponsors, where relevant, addressing the appropriate structuring and implementation of the scheme. These provisions are recommended to provide that:

- The structure and implementation of the pension scheme by the IORP is appropriate in view of the identified needs, characteristics and risk profile of members and beneficiaries.
- The assessment of how the structure and implementation of the pension scheme is appropriate should be proportionate to the nature of the scheme. The assessment should be documented.
- The appropriateness of the structure and implementation of the pension scheme is regularly reviewed, taking into account any material developments, to assess whether it remains appropriate and consistent with the needs, characteristics and risk profile of members and beneficiaries.

4.6.2. DUTY OF CARE

Identification of the issue

The shift from DB to DC schemes places greater financial risk on members and beneficiaries, as variable benefits take the place of “guaranteed” benefits under DB schemes.

When members or beneficiaries are faced with complex choices about benefits or investments, IORPs should offer adequate guidance to them by considering consumer behaviour and the architecture of the choice environment.

The ability to make good decisions can be impaired by various factors. These include asymmetries of information, lack of knowledge/understanding, behavioural biases, or complex or inadequate choice architecture/environment when the information is solely provided digitally. Combining different choices may further complicate a person’s ability to assess the potential effects of their decisions.¹⁴⁹

In addition to enhanced transparency and disclosures, there are other measures that contribute to protecting members and beneficiaries and ensuring that pension schemes are properly targeted and deliver suitable outcomes that members and beneficiaries might reasonably expect.

As such, general duty of care provisions, similar to those existing in other EU frameworks could be applied to IORPs to optimise the level of members and beneficiaries’ protection, and to support members to make informed and suitable choices that are in their financial interests.

IORPs should also take adequate steps that no undue burden and responsibilities are placed upon members or beneficiaries. It is important that the default responsibility remains with the IORP.

ANALYSIS

Policy options

Option 0: No change

Option 1: Introduce requirements for IORPs to exercise a duty of care to their members and beneficiaries

The IORP would need to comply with a general duty of care towards their members and beneficiaries. It is proposed to apply this principle to all IORPs given that the importance of acting in the best interests of members and beneficiaries is applicable to all IORPs. However, the application is considered to be relevant in particular where members can take investment decisions,

¹⁴⁹ [EIOPA Technical Advice on development of PTS \(December 2021\)](#).

where the duty would imply to adequately support members and beneficiaries to make informed and suitable choices, such as by:

- ▶ Considering the overall information needs of members and beneficiaries and whether some tailoring of the information is needed, such as based on different cohorts (e.g. providing supporting information about the relevance to reduce investment risk closer to the pension date) or the types of investment options chosen (e.g. whether specific risk warnings might be needed for certain investment options, or if certain risk limits are exceeded);
- ▶ Assessing the risk profile and suitability of choice when investment decisions are made by the member or beneficiary, or at certain life events.

It is suggested that such requirements are drafted in principles-based terms. Due to the heterogeneous nature of the European pensions landscape the new provisions would need to offer the necessary flexibility to adapt the application of the rules to the range of different types of schemes.

It can also be noted that the introduction of business conduct requirements would require consequential changes to Title V of the IORP II Directive, which currently addresses only “prudential” and not conduct supervision.

Impact of the policy options

Option 1 – Introduce requirement for IORPs to exercise a duty of care to their members and beneficiaries		
Costs	Members	Implementation costs may result in higher costs for members.
	IORPs	IORPs may have to realign how they currently conduct themselves via-a-vis members and beneficiaries which may involve additional resources.
	NCA's	NCA's may need additional resources to ensure the requirement is being upheld.
	Other	/
Benefits	Members	Members, e.g. where they are offered freedom of choice, should receive better protection against potential detriment.

	IORPs	Increased standing among members and beneficiaries of how they are treated by their IORP could lead to increased saving.
	NCA's	The principle-based approach means NCA's can tailor their approach to their systems and national schemes.
	Other	/

Comparison of policy options

Option 1 offers more protection to members and beneficiaries than Option 0, while the principle-based nature offers flexibility for NCA's to adapt the implementation to their national specificities, so option 1 is preferred.

ADVICE

EIOPA recommends introducing a new provision in the IORP II Directive establishing a duty of care principle (Option 1).

IORPs shall follow a principle of duty of care towards their members and beneficiaries. The principle shall aim to ensure that every IORP acts fairly and in accordance with the best interests of members and beneficiaries, and supports prospective members, members and beneficiaries to properly assess the choices or options provided by the IORP.

The application of the principle of duty of care shall take into account the nature of the pension scheme, including the extent to which members and beneficiaries bear risks, the scope of the IORPs' responsibilities and acknowledge the primary responsibilities of social partners and sponsors, where relevant.

5. SHIFT FROM DEFINED BENEFIT TO DEFINED CONTRIBUTIONS

5.1. EXTRACT FROM THE CALL FOR ADVICE

2. *Complementing the above analysis, an assessment of possible options in relation to the following areas:*
 - a. *Exploring the need for and possible ways to adapt the regulatory framework to the shift from Defined Benefit (DB) to Defined Contribution (DC) schemes: In many Member States, DB schemes are becoming very rare and are increasingly replaced by DC schemes. This results in a shift of the investment risk from pension providers to pension savers and an erosion of the collective level of protection in occupational pension systems. The analysis should evaluate whether the requirements under the existing legal framework under the IORP II Directive are still adapted to this reality. This part of the advice should also explore and evaluate the possible options in relation to the different types of DC schemes, i.e. on prudential, governance, and business conduct requirements, as well as requirements on information to members and beneficiaries. The Commission is aware that EIOPA has already carried out work on specific requirements of DC schemes under the existing legal framework. By issuing this CfA, the Commission intends to build on that work. (See Annex 3 for a summary)*

5.2. EUROPEAN PENSIONS MARKETS ARE SHIFTING

Pension funds have grown substantially in the euro area over the past two decades in terms of their financial assets and as a percentage of GDP (Gross Domestic Product). Euro area pension fund assets have almost doubled in size since 2008, with total assets currently amounting to approximately EUR 3 trillion and almost doubling their percentage relative to euro area GDP from 13% in 2008 to 25% in 2019¹⁵⁰.

Demographics continue to be unfavourable. The working-age population (20-64) of the EU will decrease from 265 million in 2019 to 217 million in 2070 with a consequent rise in the old-age dependency ratio (ratio of 65+ to 20-64-year-olds) from 34.4% in 2019 to 59.2% in 2070. This is an

¹⁵⁰ New pension fund statistics, published as part of the ECB Economic Bulletin, Issue 7/2020 (prepared by Jordi Gutiérrez Curos, Jürgen Herr, Rafael Quevedo, Mirna Valadzija and Me-Lie Yeh) - [ECB 2020](#)

average figure, as in some Member States the population will age much faster (for example, the dependency ratio in SK is 25.9% in 2019 and should reach 63.1% in 2070). Other countries with a particularly acute rise in the dependency ratio are ES, LT, LU, MT, PL, and PT.¹⁵¹

The pension gap in terms of both adequacy and coverage is increasing. Population ageing has forced Member States to reform state pension arrangements, resulting in a strong decline of future retirement income in pillar one. The so-called pension benefit ratio (average pension / average wage) relating to pillar one is expected to decline from 42% in 2019 to 33% of the average wage in 2070.

Shift in the labour market

According to Eurostat, on average, about 14% of EU workers are self-employed. In 2020, 27.5 million workers identified themselves as self-employed. This figure can include, in a broad sense, two categories of workers: the solo self-employed (sole traders) and the self-employed with employees (small business owners). The solo self-employed include independent contractors, consultants, freelancers and on-demand platform workers.

A 2019 Council of the European Union Recommendation¹⁵² highlighted the broad issue of unequal access to social protection: *“some non-standard workers and some self-employed persons have insufficient access to the branches of social protection which are more closely related to participation in the labour market. Only a few Member States have undertaken reforms to adapt social protection systems to the changing nature of work to protect affected workers and the self-employed better [but] Improvements have been uneven ...”*

The self-employed receive lower public pensions and are less often covered by private pensions than traditional employees. Traditional employees have access to a mix of mandatory government-sponsored pensions, to which they and their employers both contribute, and voluntary private add-on plans. Höppner¹⁵³ (2019) found that self-employment in Europe has a negative effect on total pension amounts received by individuals. Similarly, Möhring¹⁵⁴ (2015) found that longer periods of self-employment over the course of a career have a negative effect on pension income.

Through all these shifts the pensions market is transitioning from a mix of DB, DC and DC style products to one dominated by pure DC and DC style products, the consequence of which will be

¹⁵¹ [The 2021 Ageing Report. Economic and Budgetary Projections for the EU Member States \(2019-2070\) \(europa.eu\)](#)

¹⁵² Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed ([EUR-Lex - 32019H1115\(01\) - EN - EUR-Lex \(europa.eu\)](#))

¹⁵³ Höppner, J. (2019) ‘The Effect of Self-Employment on Pension Income in Europe’, SPSW Working Paper 11 Policy Contribution | Issue n°05/22 | March 2022 CeSO/SPSW/2019-08, Centre for Sociological Research, KU Leuven, available [here](#)

¹⁵⁴ Möhring, K. (2015) ‘Employment Histories and Pension Incomes in Europe’, *European Societies* 17(1): 3–26, available [here](#)

outlined below. Meanwhile in some Member States, the pensions system has historically developed directly on the basis of DC and DC style products, as such already having a long-standing tradition in DC product design and refinement.

5.3. BACKGROUND INFORMATION ON DEFINED CONTRIBUTIONS

5.3.1. COMPLEXITIES IN DEFINING DC

It is important to set out some of the complexities in talking about DC schemes, there being a broad understanding of what constitutes DC, both at European level and beyond. This section aims to lay out the complexities in defining DC but does not purport to insert a definition into the IORP II Directive.

5.3.2. SHIFT OF RISK ON A DB TO DC CONTINUUM

One important element of DC schemes across Europe is the varied understanding of what constitutes a DC product/scheme. Here the aim is to represent as broadly as possible what constitutes an occupational DC scheme and to demonstrate the difficulty in defining DC.

EIOPA's understanding of DB and DC is aligned with the OECD definitions¹⁵⁵. However, these definitions are difficult to translate to the terminology used in the IORP II Directive. The IORP II Directive specifies the degree to which members and beneficiaries bear risk (by using terms like *"where members and beneficiaries bear risk"* or *"where members and beneficiaries fully bear risks"*). The EIOPA Methodological Framework for Stress-testing IORPs has identified that *"IORPs typically pass on risk to ultimate risk bearers; they manage investments to provide for future retirement income... for pension plans offering any form of guarantee and depending on the particular arrangement of security mechanisms, risk may be shifted –in no fixed order– to*

- a) a (re-)insurer in case of a (re-)insured risk,*
- b) a plan sponsor in case a sponsor guarantee is in place,*
- c) plan members and beneficiaries in case pension benefit payments can be adjusted,*
- d) a pension protection scheme (PPS) if such a scheme is in place and the conditions for scheme support are met, or any combination of these"*

Ultimately, from a broad European view, IORPs may take different forms, depending on the particular scheme arrangements. Lying on a continuum, IORPs provide different types of pension obligations to their plan members and beneficiaries. *"Moving from one end of this spectrum to the*

¹⁵⁵ See for example table 3.5 in EIOPA's methodological framework for stress-testing IORPs (available [here](#))

other, DB plans may have some DC characteristics and DC plans may likewise involve DB like guarantees”.

An important note is also the flux that is ongoing in pensions systems between the two polarities of DC and DB. In some Member States, pension plans have gradually moved along this spectrum, e.g. from having mainly DB characteristics towards having material DC elements. As a consequence, the traditional difference between DB and DC has increasingly become blurred. The Table in Annex 4 from the EIOPA Stress test methodology demonstrates some of the complexity in presenting a coherent view of the wider EEA pensions market in terms of the DB to DC continuum.

A starting point for understanding DC for the context of this review is set out in the two following definitions which aim to capture, as broadly as possible, what constitutes DC (either pure or with risk sharing) across Europe.

What is occupational DC or pure DC?

Broadly speaking DC can be defined as where members and beneficiaries bear risks, and pure DC as where members and beneficiaries fully bear risks. Occupational DC schemes can be understood to be occupational pension plans under which the plan sponsor pays fixed contributions and has no legal or constructive obligation to pay further contributions to an ongoing plan in the event of unfavourable plan experience. Pure DC, depending on the local situation, can include DC schemes where there is a plan sponsor, or there is not. Similarly, if there is a sponsor, they can have an obligation to pay fixed contributions or not.

What is DC with risk sharing?

DC with risk sharing is any form of the above definition, where the scheme is considered DC in a Member State, with the addition of risk sharing elements such as sharing of certain risks (e.g. longevity risk, interest rate risk, inflation risk) within or between generations or specific groups, or the use of guarantees.

5.3.3. CONTEXT FOR ANALYSING RISK IN DC SCHEMES

Pension market shifts

Increasingly DB is becoming a less popular option for employers and reducing in market size. In 2019 active DC membership increased to 55% of total active members across the EEA whilst membership

in DB/hybrid schemes decreased to 45%¹⁵⁶. The shift continues having increased in 2020 alone by more than 4% in terms of members at aggregate level¹⁵⁷.

AT, BG, ES, FR, HR, IT, LV, PL and SK are dominated by DC schemes, having more than 80% of active members and covering 2/3 of the total contributions. Still, in terms of number of active members, the largest occupational pension markets in Europe are NL, DE and IT representing 70% of total active members and about 80% of total contributions. The Dutch system is also transitioning to DC which, when completed, will make the European market a predominantly DC one.

It is noteworthy to mention, however, that the transition in NL is not one from a “pure DB” to a “pure DC” system. In the present system (defined generally as DB) both the build-up of pensions as well as the payment of pensions and indexation of these pensions, are legal promises and not rights. As there are no sponsor obligations beyond the payment of premiums, both pensions and pension payments can be reduced if there is a need. The new Dutch pension system is defined as DC, but the system will remain compulsory, collective, and will contain several new solidarity mechanisms (amongst which a buffer to avoid undue volatility from year to year). Moreover, with premiums remaining largely at the same level as today (while pension accrual being made actuarially fair), there is no further shift from investment risks to the collective of participants and beneficiaries. The choice for individual options will remain very limited under the solidarity scheme and quite limited under the flexible scheme. This means that the Dutch pension system will shift but still remain in a hybrid state, somewhere in between pure DB and pure DC.

Low pensions take up

The OECD council adopted its recommendation¹⁵⁸ for the good design of DC Pension Plans in 2022, the recommendation sets out ways OECD member countries can adapt their systems to foster trust and growth in the DC market. Some recommendations include designing financial incentives to maximise the impact on enrolment and contributions. These should reflect the retirement saving needs and capabilities of different population subgroups. Another recommendation that might boost pensions saving is to promote awareness and to support financial education about retirement and pensions.

5.3.4. RISKS FOR DC SAVERS

Unlike state pension systems or occupational DB pension systems, in which the taxpayer or the employer respectively bears the burden of risk, in DC schemes the individual builds up their own

¹⁵⁶ EIOPA (2020) Consumer Trends Report (available [here](#))

¹⁵⁷ EIOPA (2021) Consumer Trend Report (available [here](#))

¹⁵⁸ Improving the design of retirement saving pension plans – OECD (available [here](#))

pension pot and bears the risk of ensuring they have an adequate income in retirement. The following risks will be outlined here:

- ▶ Retirement income risk;
- ▶ Investment risk;
- ▶ Costs and charges;
- ▶ Administration and governance;
- ▶ Knowledge gap.

Retirement income risk

The most salient risk that individuals face at retirement is that there may be insufficient funds at the pension age to provide an adequate retirement income. In tandem with this is the risk that at retirement the accumulated savings cannot be used to buy an annuity that provides a regular income for life. The annuity must be able to adequately replace a person's earnings in the years immediately preceding to their retirement, aka the replacement rate. Cannon and Tonks (2013)¹⁵⁹ examined the risks in DC schemes by using international investment returns (stock and bonds returns) and wage growth data for the period 1901 to 2007, to calculate hypothetical retirement incomes based on regular contributions throughout a working life and found, using a measure they coined "pension fund ratio" (a measure of the ratio of pension wealth to final labour income or an alternative replacement rate) that:

- ▶ In all countries pension fund ratios in DC schemes are low;
- ▶ Replacement rates are in general satisfactory but are everywhere significantly worse for those in the lowest tenth of the income distribution;
- ▶ The pension fund ratio is particularly low for all-bond investment strategies;
- ▶ The countries with the highest pension fund ratios in DC schemes, given an all-equity investment strategy are UK, USA and Australia.

They also found that pension incomes will be significantly influenced by the timing of retirement. Their research shows that in each country, the simulated pension fund ratio is volatile, depending on the state of the financial market. This volatility is, however, lower for the 'lifestyle' investment strategy, as the asset allocation within the pension fund shifts from equities to bonds as retirement nears.

¹⁵⁹ Cannon, E. and Tonks, I. (2013) 'The value and risk of Defined Contribution Pension Schemes: International Evidence', *Journal of Risk and Insurance*, 80(1), pp. 95-119 (available [here](#))

The OECD focuses on income risk in their recommendation for the good design of DC Pension Plans and notes that good DC design should:

“ensure that total contributions are sufficiently high to achieve retirement income objectives. Automatic and gradual increases to contribution rates can help members to reach appropriate contribution levels over their career.”

The recommendation also states that DC schemes should ensure protection against longevity risk in retirement. DC pension plans should provide some level of lifetime income as a default for the pay-out phase unless other pension arrangements already provide for sufficient lifetime pension payments.

The World Bank in 2014¹⁶⁰ noted that:

“As it is the member that bears the risk, it is the member outcomes that pension supervisors are seeking to protect and the focus in looking at risks is to reach these optimal member outcomes. These optimal outcomes would include appropriate contribution decisions, effective administration, appropriate investment decisions, security of assets, appropriate decumulation decisions and value for money.”

The World Bank concludes that supervisors need to take a more active role in minimising pension risk, ensuring that investment risks are aligned with the probability of achieving a target pension at retirement. As such, for risk-based supervision to be meaningful, it needs also to supervise investment risks, and assess those risks against benchmarks derived from quantifiable targets.

Investment risk

One of the biggest determinants of the outcomes for pension savers concerns the fund’s investment allocation. The options and strategies made available to members, the support available to members in navigating the choice architecture so as to best match expected outcomes with their risk and return preferences, and how these offered options are monitored, updated and if needed even changed, has huge ramifications for the final pension income of an individual. As stated above, timing can be incredibly impactful on how a fund accumulates throughout its nascent years and on the final figure available to draw down at retirement. A scheme should set suitable investment approaches, support members in the selection of any investment options (i.e. default option, available advice) and regularly measure performance so as to ensure members are reaching an adequate outcome. Member’s choice is often an important factor in how funds are invested by schemes, and in the pension systems developed by many DC Member States, this is one of the most

¹⁶⁰ Tony Randle and Heinz P. Rudolph, Pension Risk and Risk-Based Supervision in Defined Contribution Pension Funds The World Bank 2014 (available [here](#))

important tools in the process of matching member preferences with investment allocations of their available resources for retirement.

However, under DC schemes, the build-up of retirement savings depends heavily on the performance of markets and ultimately on the performance of the economy. Therefore, households' retirement savings can become more uncertain, and retirement income could be more unequally distributed.¹⁶¹

Costs and charges

According to the OECD, annual costs and charges of 1% of assets reduce final pension income by more than 20% after 40 years of pension saving¹⁶² – or equivalently raise contributions by more than 20% to achieve a given level of retirement income. Transparency is key for savers when they are making decisions about their pension and as the risk on this decision-making lies with the member, the need for accurate and transparent information on costs is vital. The consideration of costs is an important element of aligning the investment policy with the IORP's membership structure, consistent with recital 45 of the IORP II Directive.

As is set out in the EIOPA Opinion on the supervisory reporting of costs and charges of IORPs¹⁶³, the publication of the results of benchmarking assessments can bring benefits to the market in the form of “peer pressure” for IORPs to select cost-efficient / value-adding asset managers and improve further competition between service providers. In addition, cost data may be also used internally for official statistics and research activities.

The Institute of Fiscal Studies in the UK points out¹⁶⁴ that many deferred pensions held by a sample of those in their 50s are in schemes with relatively high charges by current market standards. Pension fees have fallen over time, yet deferred pensions often do not reflect these changing market conditions. They also state that another risk relating to older pensions is that the portfolio allocation may no longer be appropriate.

Administration and governance

While administrative failure impacts all type of schemes, it can be particularly detrimental to DC pensions when, for example, contributions are not invested on time, fund switches are not made

¹⁶¹ Piirits, M. and Vörk, A., “The effects on intra-generational inequality of introducing a funded pension scheme: A microsimulation analysis for Estonia”, *International Social Security Review*, Volume 72, Issue 1, 2019, pp. 33-57 (available [here](#))

¹⁶² 4 OECD, Pension costs in the accumulation phase: Policy options to improve outcomes in funded private pensions, OECD Pensions Outlook 2018 (available [here](#))

¹⁶³ EIOPA, Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/426, 7 October 2021 (available [here](#))

¹⁶⁴ The risk of pension inattention in a DC world | Institute for Fiscal Studies UK (available [here](#))

promptly, or benefits are not paid in accordance with members' instructions. With no sponsor to address such errors, DC savers can be left with smaller final retirement incomes.

Educational

Member understanding in DC schemes is crucial, and a lack of understanding will have significant consequences on member outcomes. The risks already outlined are substantially increased if a member is unaware of the best option for them or is unable to act when needed. Decisions on retirement options, investment options and costs can all impact the final pension results in retirement for a saver and is often done with limited support.

5.4. PREVIOUS EIOPA REPORTS

5.4.1. 2019 IORP STRESS TESTS

The 2019 occupational pension stress test reflected the changing European and global private pension landscape, which was challenged by:

- ▶ Low interest rates and a low yield environment;
- ▶ Heightened market volatilities in the US and global stock markets;
- ▶ Demographic and labour market changes.

Those challenges probably accelerated the manifestation of the 'new normal' of shifting the investment risks from the IORP or sponsoring undertaking (DB) to the members or beneficiaries of the IORP (DC). The adverse market scenario for the 2019 stress test would have wiped off almost EUR 250 billion of asset values in the EEA DB sector in the sample and EUR 16 billion in the EEA DC sector in the sample. This loss in values represents around 2% of the GDP of the participating countries in 2018. The results of the 2019 stress test show that the EEA pension sector was – on average - better funded in the baseline compared to previous exercises.

5.4.2. EIOPA CONSUMER TRENDS REPORTS

- ▶ 2019 - Overall, the shift from DB to DC schemes continues in several Member States (e.g. DE, IE, NL, NO, and SE). In NO, almost 95% of private occupational pension schemes have now shifted from DB to DC systems.
- ▶ 2020 - The DB to DC shift, already identified in previous years, remains noteworthy having increased by more than 4% in terms of members, at aggregate level in 2020 alone.
- ▶ 2021 - Overall, the Member States where the occupational pension sector is growing the most are those with a higher percentage of DC schemes.

5.5. POLICY OPTIONS TO ADDRESS THE SHIFT TO DC

The shift from DB to DC schemes in most Member States will result in a shift of risk to members resulting in a reduction in the level of protection in occupational pension systems. The challenge for NCAs is to protect savers managing a greater risk while also maintaining the supervision of “legacy” DB schemes. Besides the information provision and other business conduct requirements discussed in chapter 4, and through an analysis of IORP II¹⁶⁵, the remainder of this chapter considers the following areas for change:

TABLE 5.1: DC SAVERS RISKS ADDRESSED BY POLICY OPTIONS

Change proposed	Risk addressed	Secondary risk/s addressed
Long-term risk assessment	Retirement Income risk	Investment risk Administration and governance
Supervisory reporting on costs and charges	Costs and charges	Investment risk Retirement Income risk Administration and governance Knowledge gap
Complaints Procedure & ADR	Administration and governance	Retirement Income risk Costs and charges Investment risk Knowledge gap
Increased transparency of NCAs – risk assessment framework	Administration and governance	Knowledge gap
Financial Education	Knowledge gap	Retirement Income risk Investment risk Costs and charges

¹⁶⁵ A list of the IORP II references and a short description of each is found in Annex 5.

Member and/or beneficiary involvement in IORPs governance	Administration and governance	Retirement Income risk Investment risk Costs and charges Knowledge gap
Fit and proper requirements	Administration and governance	Retirement Income risk Investment risk

5.5.1. LONG-TERM RISK ASSESSMENT

Relevant legal provisions

The IORP II Directive introduced new requirements for IORPs to have in place an effective and well-integrated risk-management system, in accordance with Article 25 thereof. IORPs are required to carry out and conduct their ORA, in accordance with Article 28. The ORA should include an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits. Within the SRP, as set out in Article 49, NCAs are required to assess the risks IORPs face and the IORPs' ability to assess and manage those risks.

Diversity of DC schemes

As previously stated, one important feature of some DC pension systems which several Member States have developed for managing and mitigating the specific risks in a DC context, has been the offering of investment options for members to choose from. Conceptually, this structure makes it possible for members to make pension investment choices with regard to their own needs and preferences. Whether there are default options or there is a relevant form of advice and guidance offered, with the aim of supporting and nudging members towards the most appropriate investment option, these options should be as best as possible matched to members' preferences and expectations. The initial main responsibility of IORPs to members is performed through a good design of choice architecture (range of choices, default option) and by providing sufficient and appropriate information and guidance tools to them. Furthermore, from a portfolio management point of view, the strategic and tactical allocation of resources that define these investment options, should be built, and periodically evaluated, on the basis of members' capacity to bear losses and their risk and return preferences. As such, given the long-term investment horizon of pension products, the long-term risk assessment from the perspectives of members and beneficiaries is an important part of the general risk management structure of an IORP, even though there are contextual specificities regarding periodicity and implementation.

From a more general perspective, the risk management tools that are available to IORPs should be used in a balanced and proportionate approach that takes into consideration the diversity and specificities of the DC schemes from each Member State.

EIOPA opinion on the supervision of long-term risk assessment by IORPs providing DC schemes

The objective of the Opinion on long-term DC risk assessment¹⁶⁶ is to enhance supervisory convergence in the supervision of risk management by IORPs providing DC schemes, in particular with respect to long-term risk assessment from the perspective of members and beneficiaries, in order to foster the protection of members and beneficiaries and improve the functioning of the internal market.

The expectations contained in the Opinion should not be interpreted to be comprehensive, covering all aspects of DC risk management. Proper risk management depends on a broad range of factors, starting with the integration of risk management considerations in the IORPs’ wider system of governance. However, in this sense the Opinion focuses on one particular aspect that is relevant for DC IORPs: the usage of projections of future retirement income as part of the long-term risk assessment from the perspective of members and beneficiaries, in interaction with the determination of their risk tolerance and the establishment of investment strategies. The long-term risk assessment using pension projections complements the ongoing process of DC IORPs to effectively manage risks from the perspective of members and beneficiaries.

As part of considering the risks from the perspective of members and beneficiaries in the risk management system, NCAs should expect from DC IORPs to conduct long-term risk assessments by using projections of members’ future retirement income.

Implementation of the opinion

NCAs were asked if in their Member States there are plans to take supervisory measures to promote the different expectations laid down in the Opinion.

TABLE 5.2: IMPLEMENTATION OF THE ELEMENTS OF THE EIOPA OPINION ON IORPS PROVIDING PENSIONS IN WHICH MEMBERS AND BENEFICIARIES BEAR RISKS

	Projections	Members and beneficiaries risk tolerance	Investment Strategy	Risk assessment in ORA
Yes	5	6	6	6

¹⁶⁶ EIOPA, Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes, EIOPA-BoS-21/429, 7 October 2021 (available [here](#))

No	14	13	10	9
No, already a requirement	5	6	9	10

For those that have not introduced the use of pension projections in the risk management system and ORA, reasons for this include:

- ▶ That the market is too small (5 NCAs);
- ▶ Current system (including stress tests and scenario assessing solvency capital requirement) is sufficient;
- ▶ Not decided yet;
- ▶ IORPs are all reinsured;
- ▶ When members are offered choice of different investment options, pension projections are offered to members as part of the information requirements;
- ▶ In one Member State domestic law does not require the use of pension projections in the risk management system and ORA, but IORPs are free to use them.

For those NCAs that have not aimed to introduce the establishment of the risk tolerance of members and beneficiaries, reasons include:

- ▶ That the market is too small (5 NCAs);
- ▶ Not decided yet;
- ▶ IORPs are all (re)insured;
- ▶ One NCA considered it an ineffective tool, as the possibility to choose between different investment options is from its point of view a superior way to ensure a matching of the preferences at individual level.¹⁶⁷

For those that have not introduced taking into account the risk assessment and tolerance in the determination of the investment strategy, reasons include:

- ▶ That the market is too small (5 NCAs);
- ▶ Not decided yet;

¹⁶⁷ In this Member State's model, IORPs have an extremely large membership base (entire economic sector of reference in contractual pension funds or the entire public in open pension funds), so it is obvious that preferences are widely diversified between members; in such a context, IORPs have to provide members a choice between multiple investment options sufficiently diversified in terms of risk exposure in order to match members individual preferences.

- ▶ DC and DB schemes have the same requirements on the investment strategy;
- ▶ IORPs are all reinsured.

For those that have not introduced the documentation of the risk assessment in the ORA report and SIPP reasons include:

- ▶ That the market is too small (5 NCAs);
- ▶ Not decided yet;
- ▶ IORPs are all reinsured;
- ▶ One NCA mentions that, from its point of view, ORA refers to the own-risk assessment of the scheme and not the risks from the perspective of members and beneficiaries.

Identification of the issue

As noted above, DC savers face unique risks – notably, retirement Income risk, investment risk, costs and charges, administration and governance and knowledge gap. Through long-term risk assessment from the perspective of members and beneficiaries, IORPs can help alleviate some of the previously stated risks, particularly through knowing IORP members and beneficiaries risk tolerance, offering them relevant investment choices, and providing them key information through the use of projections. In contrast to many other financial products, occupational pensions are very long-term arrangements on which workers rely to have adequate retirement income in old age. Therefore, IORPs have the responsibility to properly assess the risks in terms of DC members' future retirement income in order to set an appropriate investment strategy or to present DC members with suitable investment options, being aligned with their capacity to bear losses and their risk-return preferences.

Policy options

Option 0: No change

Option 1: IORPs should enact long-term risk assessments from the perspective of members and beneficiaries for DC schemes, in order to better address their needs and expectations, taking into account national specificities of the IORP sector and a proportionate approach in the process of implementation

As such, IORPs should:

- ▶ determine the risk tolerance of DC members and beneficiaries, taking into account their capacity to bear risk and their risk-return preferences;
- ▶ introduce the use of pension projections in the risk assessment from the perspective of members and beneficiaries;

- ▶ where IORPs offer multiple investment options, periodically review the suitability of the investment options for the membership according to their risk tolerance; where there is a default option, the review should in particular consider the suitability of that option;
- ▶ where IORPs do not offer multiple investment options, periodically review the investment strategy to consider the long-term risk assessment from the perspective of the members and beneficiaries;
- ▶ introduce the documentation of the risk assessment in the ORA report, or the SIPP, or other internal documents where deemed appropriate by Member States.

Option 2: A combination of Option 1 with common principles for making pension projections in line with the Opinion

The common principles would cover:

1. deterministic/stochastic scenarios;
2. market sensitive and realistic assumptions;
3. consideration of characteristics of members and beneficiaries;
4. consideration pension scheme characteristics;
5. target variables and risk & performance indicators.

Impact of the policy options

Option 1: IORPs should enact long-term risk assessments from the perspective of members and beneficiaries for DC schemes, in order to better address their needs and expectations, taking into account national specificities of the IORP sector and a proportionate approach in the process of implementation		
Costs	Members	Potential of the costs of compliance measures are passed on from IORP to members and beneficiaries.
	IORPs	Potential cost to some IORPs to implement requirements to ensure compliance.
	NCA's	As some NCA's are not currently implementing such a measure there maybe material costs to increase supervision for them.
	Other	/

Benefits	Members	Increased protection of members and beneficiaries by ensuring that investment strategies/options offered to DC savers are properly matched to their risk tolerance.
	IORPs	Provides IORPs with a tool for assessing the suitability of investment strategies/options offered to DC savers.
	NCA's	As retirement income and investment risks are tangible risks to members and beneficiaries, this measure should give NCA's the ability to ensure the risk is managed by the IORP. Increased confidence in how money is invested knocks on positively to both the system and the NCA.
	Other	/

Option 2: A combination of Option 1 with common principles for making pension projections in line with the Opinion

Costs	Members	Potential of the costs of compliance measures are passed on from IORP to members and beneficiaries.
	IORPs	The investment and risk management functions, and potentially other functions, will require additional resources and/or more services will have to be sourced from external providers. In particular, this will be the case for IORPs not already doing similar risk assessments to inform the design and review of investment strategies. A substantial group of IORPs would have to establish the membership's risk tolerance.
	NCA's	NCA's will have to bear the costs of implementing and supervising the requirements in national supervision.
	Other	/
Benefits	Members	Enhanced protection of members and beneficiaries by ensuring that IORPs are expected to perform long-term risk assessment using

		scenario-based pension projections based on realistic assumptions. In conjunction with the establishment of their risk tolerance, this ensures investment strategies are aligned with the risk-return preferences of the membership, especially where IORPs are not already considering such risk assessments in the design and review of investment strategies.
	IORPs	IORPs will benefit from common approaches across the EEA, where relevant, fostering equal conditions of competition. IORPs providing PEPPs will benefit from consistency with Commission Delegated Regulation (EU) 2021/473.
	NCA	Common requirements and principles across the EEA will significantly reduce regulatory arbitrage. It will also facilitate international supervisory coordination, thereby promoting cross-border activity.
	Other	/

Comparison of policy options

As highlighted above, DC members have heightened risks in comparison to other pensions savers. By not introducing change here, the risk that DC members are exposed to unsuitable investment strategies or options is not sufficiently mitigated within the IORP II Directive, jeopardising the adequacy of their future retirement income. While many NCAs are already engaging in the type of supervision as set out by the EIOPA Opinion on long-term risk assessment – both in terms of the design of the schemes and of the possible investment choices to their members, as well as in terms of their periodical review – for Member States that have yet to implement such an approach, this may require further resources.

Moreover, pension systems are not homogenous across Europe, and DC schemes feature different risk-mitigation techniques in the accumulation phase and designs of the pay-out phase. DC schemes also differ in respect of the choice they offer. Some DC schemes offer plan members a range of investment options to choose from in accordance with certain retirement needs and risk preferences. In instances where individual choice is offered to members based on data collected on an individual basis unique to the member, the member’s choice can take precedence over a collective IORP wide choice based on the established risk tolerance of the collective IORP membership. The collective risk tolerance of the IORP membership should still be established to be

able to offer the membership a tailored choice in investment strategy (potentially even through a life-cycling approach).

In case of IORPs with DC schemes that offer investment choices for members, there is still a need to assess whether the offered investment options are appropriate for the envisaged members choosing that option, both in the design phase of the investment options and during a periodical review. Behavioural finance theory also shows that a large proportion of members do not make an active choice. This implies that in the case of default plans the risk-return characteristics should be aligned with the risk tolerance of members who do not make a choice.

Not only the design of national DC systems may differ markedly between Member States, but also the characteristics and preferences of members and beneficiaries within DC schemes. This poses the challenge of aligning the IORP's collective investment strategy – or limited number of investment options – with these different member characteristics and preferences. Moreover, there are different approaches to establishing the risk tolerance of DC members, such as the analysis of internal and external data sources as well as approaching DC members directly (through surveys, panels) and indirectly (through their representatives). The proposed policy options aim to allow ample flexibility by taking into account national specificities of the IORP sector and proportionality, by suggesting a principle-based approach to risk assessment as well as to the methodologies for establishing the risk tolerance and making pension projections.

The feedback received from stakeholders was generally mixed, several concerns being raised about the need for flexibility in order to take into account national specificities. Stakeholders mostly agree that members are prone not to choose investment options or choose badly, so, where the context applies, emphasis should be put on the default option.

Given the above considerations and the benefits of taking into account the members and beneficiaries' needs and expectations, while regarding the need to take into account the national specificities of the IORP sector from each Member State, including the differences in DC models, and proportionality in the implementation, Option 1 is the preferred principle-based policy option.

Advice

EIOPA advises that, for schemes in which members and beneficiaries bear material risk, IORPs should enact long-term risk assessments from the perspective of members and beneficiaries in order to better address their needs and expectations, taking into account national specificities of the IORP sector and a proportionate approach in the process of implementation (Option 1).

As such, IORPs should:

- ▶ determine the risk tolerance of members and beneficiaries bearing risks;

- ▶ introduce the use of pension projections in the risk assessment from the perspective of members and beneficiaries;
- ▶ where IORPs offer multiple investment options, periodically review the suitability of the investment options for the membership according to their risk tolerance; where there is a default option, the review should in particular consider the suitability of that option;
- ▶ where IORPs do not offer multiple investment options, periodically review the investment strategy to consider the long-term risk assessment from the perspective of the members and beneficiaries;
- ▶ introduce the documentation of the risk assessment into the ORA report, or the SIPP, or other internal documents where deemed appropriate by Member States.

5.5.2. SUPERVISORY REPORTING ON COSTS AND CHARGES

In the 2015 report on costs and charges of IORPs, EIOPA found that there is a lack of detailed information and practical experience on the part of NCAs to obtain details on costs and charges in a number of Member States. In consequence, it proved not possible at that time to accomplish the original goal of the project to develop common definitions and breakdowns of costs and charges. Since then, the pension sectors in a number of European countries have taken initiatives to enhance the transparency of costs.

Directive 2014/65/EU has imposed requirements on investment firms (brokers, portfolio managers) to disclose information on all costs and charges to clients, including IORPs. PEPPs are not occupational pension schemes, but they may be provided by IORPs. The PEPP Regulation requires providers to disclose a breakdown of all costs, incurred directly at the level of the provider or at the level of an outsourced activity or investment fund, in the PEPP key information document. The costs related to the PEPP are broken down by administrative, investment and distribution costs, and any additional charges for a financial guarantee must be disclosed separately.

Through its work on the Opinion on the supervisory reporting of costs and charges of IORPs¹⁶⁸, EIOPA is aware of five MS that collect transparent cost data from IORPs, explicitly disclosing all of the costs charged, including indirect costs incurred at the level of investment funds and managers.

The supervisory reporting of transparent cost data will allow NCAs to assess the cost efficiency of IORPs, the affordability for sponsors and the value for money offered to members and beneficiaries and consider the outcomes within the SRP, including in the dialogues with the IORP's management board. The cost reporting to NCAs obliges IORPs to assess and manage their cost structure in a more

¹⁶⁸ EIOPA, Opinion on the supervisory reporting of costs and charges of IORPs, EIOPA-BoS-21/426, 7 October 2021 (available [here](#))

comprehensive and transparent way, in particular where IORPs are now only considering direct and not indirect investment costs. Considering the impact of the risk burden on DC members and beneficiaries, the ability to demonstrate transparent costs to members and beneficiaries will enable NCAs to further protect the interests of pension savers in their Member States.

Identification of the issue

As noted above, DC savers face unique risks, most notably in relation to retirement income, investments, costs and charges, administration and governance and the knowledge gap. The asymmetries in knowledge around costs and charges are to the disadvantage of the pensions’ saver. DC schemes’ cost reporting to NCAs would oblige IORPs to assess and manage their cost structure in a more comprehensive and transparent way.

Policy options

Option 0: No change

Option 1: NCAs should require IORPs to report on an annual basis information on all costs and charges of DC schemes according to the principles, with the definitions and templates set out in EIOPA’s Opinion on the supervisory reporting of costs and charges of IORPs

Impact of the policy options

Option 1: NCAs should require IORPs to report on all costs and charges of DC schemes		
Costs	Members	Costs related to the cost reporting exercise may lead to an increase of charges to members and beneficiaries, which may nonetheless not lead to lower returns as the cost efficiency of the IORP may improve.
	IORPs	Less certainty on reporting content and form compared to fully standardised reporting. Some compliance risk. Costs of collecting and analysing the data, particularly for smaller entities. Some specific costs such as sponsor related internal costs and transaction costs might be difficult to calculate, leading to increased costs to schemes
	NCAs	Decreased flexibility to make adjustments to the cost classification. Could be resource intensive to implement. Could risk some principles not to be implemented or considered due to minimum approach.

	Other	/
Benefits	Members	Full transparency of costs, in particular with regards hidden costs, can lead to improved cost efficiency of IORPs and hence better value for money.
	IORPs	Potentially improved quality of data provided to NCAs. Full transparency could lead to lower level of IORP costs due to competition among asset managers. Reduction of costs of collecting and analysing this data by IORPs, in particular since for investment funds the reporting of investment and transaction costs can be collected from service providers based on MiFID II disclosures. Clearer and more detailed understanding of the charges of their investments.
	NCAs	Allows for greater comparability between IORPs, facilitating comparative assessments to enhance value for money for members and beneficiaries and affordability for sponsors and would ensure a higher quality of the supervision. Higher possible level of comparability and consistency of reported data
	Other	/

Comparison of policy options

Members and beneficiaries of DC schemes have heightened risks in comparison to other pensions savers. The risk DC savers face is not mitigated to the extent possible within the Directive. While many NCAs are already engaging in this type of supervision, for those that need to implement such strategies, this may require further resources. If it becomes clear that certain IORPs incur much higher fees than others in a particular Member States, offering a lower value for their services, in the future NCAs will need to have shown they took steps to protect savers based on the knowledge of cost and charges reporting. Stakeholders’ feedback is also largely supportive of costs and charges disclosure to NCAs.

Option 1 is in line with the aim to promote cost transparency and to enhance the value for money offered to members and beneficiaries.

Advice

EIOPA advises that NCAs require IORPs to report on an annual basis information on all costs and charges of schemes where members and beneficiaries bear risks, according to the principles, and with the definitions and templates set out in EIOPA's Opinion on the supervisory reporting of costs and charges of IORPs (Option 1).

5.5.3. COMPLAINTS PROCEDURE AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

The World Bank¹⁶⁹, OECD and the G20¹⁷⁰ all express the need for effective complaints procedures and ARDs. The G20 High-Level Principles on Financial Consumer Protection, states that jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely, and efficient. One 2012 study¹⁷¹ by the Financial Services Authority in the UK was conducted after the requirement of the publication of complaints data in 2010, requiring all firms which received more than 500 reportable complaints to publish their complaints. The study highlights include:

- ▶ 76% of firms used complaints data to compare against peers and 59% to review their own complaints performance;
- ▶ Consumer groups said firms used complaints data to demonstrate performance and what they are doing to improve performance;
- ▶ While increasing consumer awareness was not a direct objective of the initiative, consumer research suggested the publication of complaints data had begun to make an impact amongst the general public. 22% of consumers claimed to be aware of the complaints data, 38% of whom said they used it when choosing a new financial services provider.

Article 50 of the PEPP regulation¹⁷² sets out that PEPP providers and PEPP distributors should have in place effective procedures for the settlement of complaints lodged by PEPP customers concerning their rights. Such a complaints procedure in the IORP II Directive would be a safety net for pensions savers, so the saver feels there are appropriate mechanisms in place to handle their complaints and

¹⁶⁹ [World Bank Document](#) – Complaints Handling within Financial Service Providers Principles Practices and Regulatory Approaches Technical Note

¹⁷⁰ G20/OECD Task Force on Financial Consumer Protection, G20 High-Level Principles on Financial Consumer Protection - [here](#)

¹⁷¹ Changing banking for good - Report of the Parliamentary Commission on Banking Standards - [here](#)

¹⁷² REGULATION (EU) 2019/1238 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on a pan-European Personal Pension Product (PEPP) – available [here](#)

to escalate them to a reputable public institution for recourse, if required. This opportunity is especially important in a DC context (where members and beneficiaries are the ultimate risk bearers) but offers reassurance and resolution for members of all types of schemes.

The IORP II review could implement a framework and procedure for handling scheme members and beneficiaries' complaints, following the approach in Solvency II (Article 183 of Solvency II on general Information for policy holders includes the requirement to inform policyholders of the arrangements for handling complaints) or as in Article 50 of the PEPP Regulation.

When asked, as part of this review, if IORPs must provide a complaints procedure by national legislation, the majority of NCAs said 'No' (16 Member States). Nine Member States stated there is some form of national requirement for a complaints' procedure. One Member State is in the process of introducing such a requirement.

Identification of the issue

By giving the member and beneficiary the option to address an issue with the IORP, first directly and then, if unsatisfactory, with an independent third party, offers the member or beneficiary an avenue for recourse. Moreover, available information about the steps that members are able to take and the institutions they can rely on to assist them, in the form of a transparent format, would ensure the best way to address their concern. This disclosure text would also clarify and improve efficiency for internal processes of IORPs employees as well.

Policy options

Option 0: No change

Option 1: Introduce requirement for IORPs to have a transparent complaints and ADR procedure

Impact of the policy options

Option 1: Introduce requirement for IORPs to have a transparent complaints and ADR procedure		
Costs	Members	Costs related to the development and implementation of these procedures may lead to an increase in charges to members and beneficiaries.
	IORPs	May require additional resources to develop and implement such procedures.

	NCA's	May require additional resources to analyse and monitor the implementation and result of these procedures, if something similar is not already in place.
	Other	/
Benefits	Members	A better and clearer system in place to address complaints and dispute resolution. More agency for members when they are unhappy with their experience to do something about their grievance.
	IORPs	Improved capability of addressing complaints and disputes in order to properly address the needs of its members and beneficiaries.
	NCA's	Obtain a better and clearer view of potential issues that members and beneficiaries raise in connection to their IORPs and having the ability to better observe and monitor how these issues will be resolved and eliminated.
	Other	/

Comparison of policy options

As stated, 10 Member States have some form of complaints procedure (or are in the process of implementing one) and as this strengthens protections for all pension savers. Stakeholders' feedback has been limited, with one important concern being the existing specific national regulations in this domain that should be taken in account when designing the procedure. Since the policy option is principle-based, national specificities can be easily accounted for. Option 1 is preferred.

Advice

EIOPA advises the introduction of a principles-based requirement for IORPs to have a transparent complaints and ADR procedure (Option 1). The procedure should be proportionate to the nature, scale and complexity of the activities of the IORPs.

5.5.4. ARTICLE 51.2 - INCREASED TRANSPARENCY OF NATIONAL COMPETENT AUTHORITIES – RISK ASSESSMENT FRAMEWORK

Currently, Article 51 (2) of the IORP II Directive sets out information that should be publicly provided by the NCA, and this could include a provision that mandates NCAs to have in place a risk assessment framework. In a risk-based supervisory environment, this could assist IORPs to maintain compliance to the levels expected by the supervisor. Although not an issue that concerns DC schemes exclusively, in an increasing DC environment and considering the DC SIPP recommendations outlined in the EIOPA Opinion on the use of governance and risk assessment documents in the supervision of IORPs¹⁷³, this provision would be useful.

Identification of the issue

Through the explicit introduction of the risk assessment framework into Article 51(2) as part of the SRP, NCAs will then need to provide a high-level overview of their risk assessment framework for all IORP schemes to the public. The aim here is both to foster an environment of supervisory transparency, while also providing the industry a clearer indication of the priorities of the supervisor.

Policy options

Option 0: No change

Option 1: Introduce requirement for NCAs to provide their risk assessment framework publicly

Impact of the policy options

Option 1: Introduce requirement for NCAs to provide their risk assessment framework publicly		
Costs	Members	/
	IORPs	Very little in terms of costs but once some IORPs are aware of the framework for their NCA they may need to realign their compliance goals.
	NCAs	Providing the framework is high level enough so there should be very little cost beyond the administration of maintaining the framework on their website.

¹⁷³ EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19-245, 10 July 2019 (available [here](#))

	Other	/
Benefits	Members	Transparency in how IORPs are regulated should provide a safer system for the member and beneficiary.
	IORPs	Knowledge of how the supervisor is regulating, particularly in MS where there has been a shift to risk-based supervision, will provide clarity on the compliance goals an IORP must achieve.
	NCA	Higher quality compliance among IORPs should ultimately come from this, in conjunction with clearer channels of communication between the regulators and the regulated.
	Other	/

Comparison of policy options

Option 1 should strengthen NCAs’ relationships with IORPs, so it is recommended. Stakeholders feedback was mostly positive, supportive, or indifferent (in the sense that they cannot see any specific disadvantages to the policy option).

Advice

EIOPA advises the introduction of a requirement for NCAs to provide a high-level overview of their risk assessment framework, as part of the information publicly provided in the framework of the supervisory review process as set out in Article 51 (2) (b) of the IORP II Directive (Option 1).

5.5.5. FINANCIAL EDUCATION

There is acknowledgment of the importance of financial education for pensions to ensure informed personal financial and retirement planning – particularly for DC savers. As stated previously in Section 4.2, EIOPA members reported that the member or beneficiary sometimes does not know where to find specific information in the PBS, and that the information may be too long, formulated in too general a way or using too much jargon, which decreases the comprehensibility and diminishes the degree to which members and beneficiaries can act upon that information. Now with the proposed changes to the PBS around SFDR information, projections and costs disclosures, there will be, in some circumstances, more information for pensions savers to digest. The PBS advice proposes layers to counter some of the difficulties that members and beneficiaries might have in

digesting the more complex information but having a strong grounding in financial education would also be a support to citizens.

The Directive could explore possible encouragement of NCAs – where applicable – to pursue the broadening of the general public’s financial literacy, while acknowledging the limits of education and that it is broader than just a need for knowledge on pensions. The aim to improve financial literacy is not a universal panacea for (potential) members and/or beneficiaries to make the correct choices in regard to their retirement planning, however, it is an important step in this direction, especially in a DC context. NCAs are just one important element in improving financial literacy, if not only through their leadership approach but also through their work in ensuring the quality of the disclosure material members receive. However, the effort of improving financial literacy should come from a holistic government wide approach, and not be focused exclusively on NCAs with responsibility for supervising IORPs.

A strong grasp of financial education is, of course, no substitute for well run and supervised pension institutions and, as such, this acknowledgment of the importance of financial education could feature as a recital in the Directive.

5.5.6. MEMBER AND/OR BENEFICIARY INVOLVEMENT IN IORPS GOVERNANCE

Identification of the issue

Another way to enhance the protection of members and beneficiaries would be a more direct involvement in the governance of the IORPs by members or beneficiaries. It could be considered to enhance governance requirements by making sure that members/beneficiaries are directly represented. As such, for all types of schemes where members and beneficiaries do not have any form of collective representation in the IORPs governance structure, they should be offered the opportunity to express their needs, preferences and expectations.

How this can be done depends on the current governance structure of the IORP – some already have opportunities for members/beneficiaries or employee representatives to sit at the management board of the IORP, while in some Member States trade unions or employee representative bodies must be informed of changes in the governance of the IORP etc. One example of how this is currently done comes from PT, where there is already a specific governance structure (the pension plan monitoring committee) that ensures the representation of the sponsors and of the members and beneficiaries, in matters that relate to the pension scheme and the management of the IORP. One aspect that needs to be taken into account is the fact that members and beneficiaries and / or their representatives may not have the necessary requirements to make the final decision in respect to the IORPs they are part of. Even though they might contribute meaningfully to the governance process, the ultimate decision rests with the IORP’s management or supervisory body.

Policy options

Option 0: No change

Option 1: Introduce requirement for IORPs to demonstrate that their members and beneficiaries have had the opportunity to contribute in a meaningful way in the decision-making of the IORP that has direct impact on the members/beneficiaries themselves

Due to the heterogeneous nature of the European pensions landscape this can be provided as a high-level principle-based requirement where Member States can then interpret how they will require IORPs to demonstrate how they meet this requirement.

Impact of the policy options

Option 1: Introduce requirement for IORPs to demonstrate that their members and beneficiaries have had the opportunity to contribute in a meaningful way in the decision making of the IORP that has direct impact on the members/beneficiaries themselves.		
Costs	Members	/
	IORPs	Very little in terms of costs but for some IORPs they may need to realign their compliance goals depending on how this is enacted locally.
	NCAs	/
	Other	Trade unions and employer representative bodies may make themselves available to support this measure where this was not the case before and as such require some resources.
Benefits	Members	Representation should bring both the member and beneficiary closer to their IORP while also having their interests well represented in the decision-making process.
	IORPs	Insight into members’ and beneficiaries’ views can help most IORPs to better reflect members’ and beneficiaries’ wishes in their decisions.
	NCAs	Higher quality compliance among IORPs should ultimately come from this, in conjunction with clearer channels of communication between members and beneficiaries and IORPs.

	Other	Trade unions and employer representative bodies will have more access to IORP decision-making and can represent their members and beneficiaries better.
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Comparison of policy options

Option 1 offers more protection to members and beneficiaries than Option 0. The principles-based nature of Option 1 offers flexibility for NCAs in implementing this requirement with regard to existing structures of local IORPs' governance and their internal processes. Option 1 is preferred.

Advice

EIOPA advises the introduction of a principles-based requirement for IORPs to demonstrate that their members and beneficiaries have had the opportunity to contribute in a meaningful way in the decision-making of the IORP in matters that have a direct impact on the members and beneficiaries themselves, in accordance with the scope of the IORPs' responsibilities and acknowledging the primary responsibilities of social partners and sponsors, where relevant (Option 1).

5.5.7. FIT AND PROPER REQUIREMENTS

Identification of the Issue

Due to the specific risks that exist for DC schemes, persons that effectively run the IORP need, in terms of fitness, to have knowledge of the unique nature of these risks so as to properly carry out their functions. Currently the directive does not offer context based on the specificities and nature of the IORP product type.

Analysis

Currently Article 22 ('Requirements for fit and proper management') stipulates that "*Member States shall require IORPs to ensure that persons who effectively run the IORP, persons who carry out key functions and, where applicable, persons or entities to which a key function has been outsourced in accordance with Article 31 fulfil the following requirements when carrying out their tasks:*

(a) the requirement to be fit:

(i) for persons who effectively run the IORP, this means their qualifications, knowledge and experience are collectively adequate to enable them to ensure a sound and prudent management of the IORP;

(ii) for persons who carry out the actuarial or internal audit key functions this means their professional qualifications, knowledge and experience are adequate to properly carry out their key functions;

(iii) for persons who carry out other key functions this means their qualifications, knowledge and experience are adequate to properly carry out their key functions”

The EIOPA Handbook on the prudent person rule sets out that NCAs should assess the qualifications, the relevance, the length and breadth of experience and the good repute in relation to the position applied for or held both at the starting date of the appointment and on-going, by taking into account the nature, scale and complexity of the IORP’s investments.

Investment knowledge, knowledge of assets, experience of pensions management and knowledge of risk are particularly important components for managing the unique risks of a DC scheme. By stipulating the nature of the IORP’s scheme type in Article 22(1)(a)(i), the risks of DC members and beneficiaries are taken into account and can be adequately acknowledged through the fit and proper stipulations.

Policy options

Option 0: No change

Option 1: Inclusion of a reference to the nature of the IORP’s scheme type in Article 22(1)(a)(i)

Impact of the policy options

Option 1: Inclusion of a reference to the nature of the IORPs scheme type in Article 22(1)(a)(i).		
Costs	Members	/
	IORPs	Some internal procedural changes may need to happen to ensure the IORP’s management board is representative in terms of fitness for the type of pension scheme.
	NCAs	Some internal procedural changes may need to happen to ensure the change is taken into account.
	Other	/
Benefits	Members	Increased protection of members and beneficiaries by ensuring that knowledge and experience is represented in the IORP’s management or supervisory body.

	IORPs	/
	NCA's	Should reassure NCA's that the IORP board is fit and proper vis-a-vis the activities of the IORP.
	Other	/

Comparison of policy options

Some stakeholders have raised concerns regarding the direct link between fit and proper requirements and IORPs that offer DC schemes, and more specifically the need for such a provision in the Directive, since the Directive does not generally offer an explicit DB / DC definition and distinction. However, to enhance the protection of members and beneficiaries, Option 1 is preferred. In this policy option, as a response to the concerns raised, there is no direct reference to DC schemes, but a general approach is put forward, making a connection between fit and proper requirements and the type of occupational pensions schemes.

Advice

EIOPA advises an amendment to Article 22(1)(a)(i) of the IORP II Directive to acknowledge that the collective fitness of those who run IORPs should include the knowledge and competencies enabling them to address the different levels of risk that members and beneficiaries are exposed to, depending on the nature of the schemes they are part of (Option 1).

6. SUSTAINABILITY

6.1. EXTRACT FROM THE CALL FOR ADVICE

2. *Complementing the above analysis, the Commission requests an assessment of possible options in relation to the following areas:*

- b. Exploring ways to strengthen the sustainability aspects of the fiduciary duties and stewardship rules of pension funds: In line with the Strategy for Financing the Transition to a Sustainable Economy, the Commission invites EIOPA to assess the potential need to broaden the concept of the “long-term best interests of members and beneficiaries” in point (a) of Article 19(1) of the IORP II Directive. In its analysis, it should evaluate the possible introduction of the notion of double materiality, considering members’ and beneficiaries’ sustainability preferences and broader societal and environmental goals. EIOPA should further assess whether the ‘prudent person rule’ set out in Article 19 (1) of the IORP II Directive should be clarified and/or explore possible avenues to require the integration of sustainability impacts in the investment decision.*

6.2. RELEVANT PROVISIONS IN IORP II DIRECTIVE AND OTHER REGULATIONS

The IORP II Directive requires IORPs to take into consideration sustainability factors and risks in the following areas:

- ▶ The system of governance, as set out in Article 21;
- ▶ The risk management and the own-risk assessment, as set out in Articles 25 and 28;
- ▶ The information to be provided to prospective members, as set out in Article 41.

On investment decisions, as set out in Article 19, the IORP II Directive sets out that Member States “shall allow” IORPs to take into account the potential long-term impact of investment decisions on ESG factors. The wording “shall allow” implies that the consideration of ESG factors is voluntary at the discretion of the IORP.

Recital 58 sets out “the relevance and materiality of environmental, social and governance factors to a scheme's investments and how such factors are taken into account should be part of the information provided by an IORP under this Directive. This does not preclude an IORP from satisfying

the requirement by stating in such information that environmental, social and governance factors are not considered in its investment policy or that the costs of a system to monitor the relevance and materiality of such factors and how they are taken into account are disproportionate to the size, nature, scale and complexity of its activities”.

In March 2018, the Commission published its Action Plan ‘Financing Sustainable Growth’ where banks, insurance companies and pension funds were considered the main source of external finance for the European economy and a vital pathway for converting savings into investments. As a result, they could provide the critical mass of investments needed to close the gap for the transition to a more sustainable economy. However, banks, insurance companies, and pension funds may also be exposed to risks related to unsustainable economic development. The COM invited EIOPA to provide an opinion on the impact of prudential rules for insurance companies on sustainable investments, with a particular focus on climate change mitigation and that advice was considered for the review of Solvency II.

The recital 3 of Solvency II Delegated Regulation¹⁷⁴ sets out the impact assessment underpinning subsequent legislative initiatives published in May 2018 demonstrating the need to clarify that sustainability factors should be taken into account by insurance and reinsurance undertakings as part of their duties towards policyholders. Insurance and reinsurance undertakings should therefore assess not only all relevant financial risks on an ongoing basis but also all relevant sustainability risks as referred to in the SFDR that, where they occur, could cause an actual or potential material negative impact on the value of an investment or a liability.

Solvency II integrates sustainability risks in the prudent person principle for the investment management of insurance and reinsurance undertakings, as reflected in Article 275a of the Delegated Regulation in a way that reflects the double materiality¹⁷⁵. The Article is split into two paragraphs: the first paragraph requires the undertakings to take into account sustainability risks when they identify, measure, monitor, manage, control, report, and assess risks arising from investments. The second paragraph clarifies that, for the purpose of the first paragraph, undertakings need to take into account the potential long-term impact of their investment strategy and decisions on sustainability factors, and, where relevant, reflect customers’ sustainability preferences.

On IORPs’ fiduciary duties, recital 45 of the IORP II Directive sets out “compliance with the prudent person rule, therefore, requires an investment policy geared to the membership structure of the individual IORP”, and Article 19 of the IORP II Directive sets out “the assets shall be invested in the

¹⁷⁴ [Commission Delegated Regulation \(EU\) 2021/1256 of 21 April 2021 amending Delegated Regulation \(EU\) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings.](#)

¹⁷⁵ Double materiality consists of two parts: (i) to take into account sustainability risks in prudent person principle for investment management ('outside-in') and (ii) to take into account the impact of the entity’s investments on sustainability factors ('inside-out').

best long-term interests of members and beneficiaries as a whole” but there is not any consideration on members’ and beneficiaries’ sustainability preferences.

The Solvency II Delegated Regulation incorporates in the remuneration policy¹⁷⁶ information on how those policies take into account the integration of sustainability risks in the risk management system and includes in recital 4 the principal adverse impacts on sustainability factors¹⁷⁷ to adapt their processes, systems, and internal controls concerning those disclosures. Both requirements are also included in the SFDR.

On the stewardship, Article 3g(1) of the Shareholder Rights Directive II (SRD)¹⁷⁸ sets out that IORPs must develop and publicly disclose an engagement policy describing how they integrate stewardship in their investment strategy or publicly disclose a clear and reasoned explanation of why they have chosen not to develop such a policy.

6.3. OTHER REGULATORY BACKGROUND

In NL, there are voluntary rules adopted by many pension funds, such as the Agreement for the Pension Funds (IMVO Covenant¹⁷⁹) or the industry benchmark initiative from VDBO¹⁸⁰ for the 50 largest pension funds. Besides, DNB has recently published a “[Guide to managing climate and environmental risks](#)¹⁸¹”, which contains good practices for IORPs in adopting ESG in risk management and also in strategy, governance and reporting.

In DE, the BaFin Guidance Notice on Dealing with Sustainability Risks¹⁸² provides a compendium of non-binding procedures and good practices principles for the identification and recording of ESG risks.

One observation from the regulatory dialogues held is that regulation may oblige the consideration of ESG factors in the investment decision of fiduciaries. Still, the obligation is usually more on the

¹⁷⁶ Delegated Regulation (EU) 2015/35: Article 275: the following paragraph 4 is added: “4. The remuneration policy shall include information on how it takes into account the integration of sustainability risks in the risk management system.”

¹⁷⁷ Delegated Regulation (EU) 2021/1256: Recital 4: Insurance undertakings that disclose principal adverse impacts on sustainability factors in accordance with Regulation (EU) 2019/2088 should also adapt their processes, systems and internal controls with respect to those disclosures.

¹⁷⁸ [Directive \(EU\) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.](#)

¹⁷⁹ [The Social and Economic Council of the Netherlands, Pension Funds Agreement, 31 December 2022.](#)

¹⁸⁰ [VDBO, Benchmark on Responsible Investment by Pension Funds in the Netherlands 2021, November 2021.](#)

¹⁸¹ DNB, [Guide to managing climate and environmental risks, 30 March 2023.](#)

¹⁸² [BaFin, Guidance Notice on Dealing with Sustainability Risks, 15 January 2020.](#)

processes rather than the outcomes. It seems accepted that fiduciaries have the last word on the investment decision, be it sustainable or not, as long as they can justify their choices.

6.4. THE INTEGRATION OF SUSTAINABILITY FACTORS IN INVESTMENT DECISIONS

6.4.1. IDENTIFICATION OF THE ISSUE

According to the prudent person rule, IORPs are currently not required to integrate sustainability factors in their investment decisions. IORPs, according to Article 19(1)(b) of the IORP II Directive, are allowed to integrate sustainability factors on a voluntary basis and at the discretion of the IORP where it is consistent with the prudent person rule. The IORP II Directive does not include the double materiality concept in Article 19(1)(b).

In the Opinion on the supervision of the management of ESG risks faced by IORPs, EIOPA stresses that ESG risks tend to manifest themselves as traditional prudential risks, thus IORPs should consider them if they want to acquire a holistic view of their exposure to risks. Moreover, it states that the consideration of ESG risks on the invested assets is in line with the prudent person rule. The Opinion also encouraged IORPs to take into account the potential long-term impact of investment decisions on ESG factors.

In addition, the Opinion stressed that the management of ESG risks cannot be considered in isolation from the consideration of ESG factors in the system of governance, investment policy, and information provision to members and beneficiaries.

As a result, a step that could further improve the risk management of IORPs may be to require IORPs within the Prudent Person Rule to take into account sustainability risks, and as part of that, the long-term impact of their investment decisions on ESG factors.

According to the survey results on the monitoring of the implementation of the EIOPA Opinion on ESG risk assessment, almost 50% of NCAs have implemented this Opinion. Many NCAs responded that ESG risk assessment is a relatively new practice and that their risk assessment methodologies and tools are still evolving.

6.4.2. ANALYSIS

The COM invited EIOPA to provide an opinion on the impact of prudential rules for insurance companies on sustainable investments, with a particular focus on climate change mitigation and that advice was considered for the review of Solvency II. In that advice, EIOPA advised the COM to require the consideration of sustainability risks and double materiality as part of the prudent person principle in the investments of insurance undertakings.

Pension funds, insurance undertakings, and banks are considered the main source of external finance for the European economy. Given the long-term nature of their investments, IORPs are more exposed to long-term risks related to unsustainable economic developments. Therefore, it is important to follow at least the same steps towards the transition to a more sustainable economy. Solvency II, in its Delegated Regulation¹⁸³, includes a requirement on double materiality on the investments of insurance undertakings.

EIOPA acknowledges that the review of Article 19 to require sustainability considerations in the investment decision-making would impact the supervision of IORPs in most European jurisdictions. According to the survey responses, the integration of sustainability considerations in the investment decisions will have an impact on the supervision and on IORPs themselves. NCAs will be required to have specific knowledge to supervise sustainability issues and the responsibilities of the NCAs will increase.

The integration of double materiality in institutional investors' investment strategy and decisions would imply that the investors should also consider the impact they make on environmental and social issues (inside-out) as part of the consideration and management of the underlying environmental and social risks and financial implications for their investments (outside-in).

This requires IORPs to have access to relevant assets' data and to have the necessary knowledge and competence to assess and manage sustainability risks and the impact of their investments on sustainability factors. This is potentially difficult and costly for IORPs with low resources.

In fact, according to the survey, most NCAs consider that there are challenges in implementing the proposed new requirements in the Prudent Person Rule. The main challenges where NCAs have a common view are:

- ▶ Lack of resources (staffing/expertise/knowledge challenges) to analyse double materiality (BG, FI, HR, IE, LI);
- ▶ Lack of relevant sustainability data on the invested assets (BE, BG, FI, IE, PT, RO);

¹⁸³ [COMMISSION DELEGATED REGULATION \(EU\) 2021/1256 of 21 April 2021 amending Delegated Regulation \(EU\) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings](#):

The Solvency II Delegated Regulation requires the integration of 'sustainability risks', which includes environmental, social and governance risks into the (re)insurers' as part of the prudent person principle, investment strategy and decisions (Article 275a):

- When identifying, measuring, monitoring, managing, controlling, reporting and assessing risks from investments, (re)insurance undertakings shall take into account sustainability risks
- (Re)insurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors.

Where relevant, the investment strategy and decisions shall reflect the sustainability preferences of the insurer's customers taken into account in the product approval process.

- ▶ Higher costs for producing and implementing effective ESG strategies (e.g., involvement of external partners). Higher costs for IORPs, especially for the smaller ones, for the involvement of external partners and those costs will be finally borne by members (BE, BG, DE, HR, IE, LI, SI);

Because of the answers above, the concept of double materiality in IORPs' investment decisions should be considered in a cost-effective way for IORPs with lower resources.

With regard to double materiality, EIOPA acknowledges that considering sustainability risks and sustainability factors are different but related requirements, which require thorough consideration in this advice. EIOPA advises an integrated approach where the impact on sustainability factors is considered as a part of the assessment of sustainability risks. Accordingly, IORPs would be obliged to consider the impact of their investment decisions on sustainability factors when and to the extent it poses a sustainability risk to them.

There are two main reasons for linking the two requirements on sustainability risk and consideration of the adverse impact of investment decisions on sustainability factors. First of all, the prudent person rule aims to ensure that IORPs invest in the best long-term interest of members and beneficiaries and hence to ensure the best return on the investments, considering all relevant risks (including sustainability risks). The explicit reference to sustainability risk (and not to other risks) in the prudent person rule clarifies that the impact materiality (inside-out aspect of double materiality) needs to be considered when there are potential financial implications resulting from sustainability risks.

EIOPA recommends an approach, in relation to the proposed requirement on the consideration of the adverse impact of investment decisions on sustainability factors for risk management purposes, that does not imply that IORPs have to disclose on this consideration in the statement that is required under Article 4(1)(a) of the SFDR, which states that "financial market participants shall publish and maintain on their websites, where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies with respect to those impacts". This would ensure that the proportionality principle embedded in Article 4 SFDR, that intends not to require smaller IORPs to disclose a statement on the consideration of adverse impacts of investment decisions on sustainability factors, also applies when such IORPs consider the adverse impacts for sustainability risk management purposes.

In addition, if IORPs in the prudent person rule are required to consider the adverse impacts of investment decisions on sustainability factors within the sustainability risk context only, this would avoid triggering the application of SFDR Article 8 for pension schemes that do not promote this as a sustainability characteristic in disclosures to members. Article 8 of the SFDR is triggered when a financial product (e.g. a pension scheme) offered by a financial market participant (e.g. an IORP) promotes environmental or social characteristics. EIOPA is of the view that Article 8 of the SFDR should thus only be triggered for IORPs that present the consideration of the adverse impact of their

investments on sustainability factors as an objective of the pension scheme instead of only as part of a risk management measure in documents that the members and beneficiaries receive, such as the SIPP or the annual report where this is a disclosure that is not “promoted” as a characteristic as such. IORPs that have sustainability goals embedded in the investment policy still need to manage the sustainability risks.

Requiring IORPs to also consider sustainability factors as part of the requirement to assess and manage sustainability risks within the prudent person rule should yield enhanced long-term returns, improved risk management, and positive societal impact.

EIOPA believes that if IORP II Directive takes into account sustainability considerations in the investment decisions as the Solvency II Directive does, it should also take into account other sustainability requirements similar to Solvency II Delegated Regulation in the remuneration policy, reckoning IORP specificities.

The remuneration policy should contain information on how it takes into account the integration of sustainability risks in the risk management system to ensure that risks identified by the risk management system are effectively managed. This will strengthen the system of governance by linking the management board’s remuneration to sustainability performance. This will also enhance risk management, ensuring that the structure of remuneration does not encourage excessive risk-taking with respect to sustainability risks and considers any potential conflicts of interest on remuneration in a way that is consistent with the integration of sustainability.

IORPs should assess not only relevant financial risks on an ongoing basis but also all relevant sustainability risks, as referred to in the SFDR. Sustainability risks, when realised, could cause an actual or potential material negative impact on IORPs’ investments. EIOPA considers that IORPs that disclose principal adverse impacts¹⁸⁴ on sustainability factors in accordance with SFDR, should also adapt its processes, systems and internal controls with respect to those disclosures as it is included in the Solvency II Delegated Regulation¹⁸⁵.

EIOPA advised COM, as part of the Solvency II review, to promote the disclosure of adverse impacts on sustainability factors concretely by including in Article 293 of the Delegated Regulation (‘Business and performance’), the requirement to publicly disclose activities that have a positive impact on ESG in their investment and underwriting activity.

¹⁸⁴ Regulation (EU) 2019/2088 recital 20: Principal adverse impacts should be understood as those impacts of investment decisions and advice that result in negative effects on sustainability factors.

¹⁸⁵ Delegated Regulation (EU) 2021/1256: Recital 4: Insurance undertakings that disclose principal adverse impacts on sustainability factors in accordance with Regulation (EU) 2019/2088 should also adapt their processes, systems and internal controls with respect to those disclosures.

Another aspect is to consider sustainability in the ORA. Sustainability and the management of environmental risks have become key considerations due to the long-term nature of pension investments. Hence, the use of scenario analyses and stress tests is getting more important to gain insights into the effects of environmental risks on the pension sector, reducing the uncertainty of climate change. However, only 16% of IORPs report using scenario analyses in their own risk management to identify, assess, monitor and/or manage ESG and sustainability risks.¹⁸⁶ According to EIOPA's Opinion on the supervision of the management of ESG risks faced by IORPs, NCAs should expect more direct quantifications of risk exposures by means of scenario analysis with respect to climate change that allows a quantitative assessment of some of the new and emerging risks explicitly mentioned in Article 28 of the IORP II Directive on ORA (...). Therefore, EIOPA considers that the long-term nature of IORPs' investment practices would be improved via scenario analyses as part of the ORA to quantify the climate change risks but with a proportionate approach according to the nature, scale and complexity of IORPs' activities.

According to the EIOPA Opinion on the supervision of the use of climate change risk scenarios in ORSA¹⁸⁷ "undertakings without any prior experience can start off analysing long-term climate scenarios in a largely qualitative way to build adequate capacity and gain experience". IORPs without any experience can identify the materiality of exposures to climate change risks through qualitative analysis. The quantitative analysis could be used to assess the exposure of assets to transition risk (for example, based on their carbon footprint) and physical risks (for example, based on their geographical location).

Finally, the IORP II Directive refers to ESG instead of sustainability, whilst the SFDR and the Solvency II Delegated Regulation refer to sustainability in the definition provisions¹⁸⁸. Therefore, in order to align the terminology on sustainability across the different regulations, the IORP II Directive should incorporate the term "sustainability" instead of "ESG" in the different provisions.

¹⁸⁶ EIOPA, [2022 IORP Climate Stress Test Report, 13 December 2022](#).

¹⁸⁷ [EIOPA, Opinion on the supervision of the use of climate change risk scenarios in ORSA, EIOPA-BoS-21-127, 19 April 2021](#).

¹⁸⁸ Please see SFDR Article 2 points (22) and (24) and the Solvency II Delegated Regulation Article 1 points (55c) and (55d). The definitions are the same in these provisions.

Policy options

Option 0: No change

Option 1: Integrating the European sustainability requirements that were also integrated into other regulatory frameworks, such as Solvency II

This option consists of the following:

- ▶ requiring the integration of sustainability risks in investment decisions as part of the prudent person rule, and for the purpose of that integration, to also take into account the adverse impacts of investment decisions on sustainability factors;
- ▶ requiring IORP’s remuneration policy to include information on how it takes into account the integration of sustainability risks in the risk management system;
- ▶ requiring that if IORPs disclose principal adverse impacts on sustainability factors in accordance with SFDR, IORPs should also adapt their processes, systems and internal controls with respect to those disclosures;
- ▶ including in the ORA the scenario analysis to quantify the risk exposures to climate change with a proportionate approach according to the nature, scale and complexity of IORPs’ activities;
- ▶ including in Article 6 of the IORP II Directive the definitions of “sustainability risk”¹⁸⁹ and “sustainability factors”¹⁹⁰ as defined in SFDR or the Solvency II Delegated Regulation.

Please see Annex 6: Comparison of the Solvency II Delegated Regulation and IORP II review requirements on sustainability.

Impact of the policy options

Option 1: Integrating the European sustainability requirements that were also integrated into other regulatory frameworks, such as Solvency II		
Costs	Members	▶ Integrating sustainability considerations in investment decision-making will most likely increase costs (i.e., selection of investments, transition costs, higher fees for sustainable securities) for members of IORPs.
	IORPs	▶ The assessment of sustainability risks and within this, the adverse impacts of investment decisions, requires access to relevant data

¹⁸⁹ “sustainability risk” means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential negative impact on the value of the investment or on the value of the liability.

¹⁹⁰ “sustainability factors” mean environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.

		<p>and the necessary knowledge and competence to embed the ESG factors in the policies of IORPs or rely on outsourced services. This might be challenging and costly for IORPs with lower resources.</p> <ul style="list-style-type: none"> ▶ The consideration of the impact of the investments on environmental or social factors could be burdensome for smaller IORPs: The lack of expertise and knowledge needed to embed ESG factors in all the relevant areas of its implementation.
	NCA's	<ul style="list-style-type: none"> ▶ The integration of sustainability considerations will impact the NCA's supervision operations and increases their responsibilities. ▶ The expansion of supervision operations will increase NCA's costs.
	Other	/
Benefits	Members	<ul style="list-style-type: none"> ▶ Members will benefit from integrating sustainability factors in the remuneration policy as IORPs should consider the effect of potential conflicts of interest on remuneration.
	IORPs	<ul style="list-style-type: none"> ▶ IORPs should assess not only relevant financial risks on an ongoing basis but also all relevant sustainability risks as part of the Prudent Person Rule. This will enhance the IORP's risk management. ▶ It is beneficial to mitigate sustainability risks in order to have a better-performing investment portfolio. ▶ IORPs will benefit from integrating the sustainability dimension into remuneration policy: IORPs will have a more enhanced, sound, and effective risk management framework. ▶ IORPs can be more confident that the structure of remuneration does not encourage IORPs' management into excessive risk-taking. ▶ The scenario analysis improves the resilience of IORPs against climate change, enables them to identify vulnerabilities stemming from climate risks, and provides insights into environmental risks.
	NCA's	<ul style="list-style-type: none"> ▶ Setting mandatory sustainable considerations would facilitate harmonised supervisory practices across the EU. ▶ There is no reason to take a different approach to insurance on this issue.

		<ul style="list-style-type: none"> ▶ Aligning terminology between IORP II Directive, Solvency II, and SFDR might ensure consistent language on sustainability to avoid any misinterpretations.
	Other	<p>Benefits for financial stability, internal market, and the environment:</p> <ul style="list-style-type: none"> ▶ The consideration of sustainability factors in investment decision-making can increase the resilience of the real economy. By focusing on sustainability, the financial system’s stability could improve and the participants in the financial markets could have more selection when acquiring securities that contribute to sustainable growth. ▶ Long-term, responsible investments will benefit the environment and society as a whole. ▶ Integrating sustainability in investment decision-making will aid in closing the transition gap for a more sustainable economy.

Comparison of policy options

Sustainable finance has a key role to play in delivering the policy objectives under the European green deal¹⁹¹ as well as the EU’s international commitments on climate and sustainability objectives.

EIOPA strongly supports the transition to a low-carbon, more resource-efficient and sustainable economy and has been at the forefront of efforts to build a financial system that supports sustainable growth.

The IORP II Directive’s provisions on sustainability should be further developed and aligned with the recent regulatory frameworks in order to fully integrate sustainability considerations. While acknowledging that there will be costs related to integrating sustainability factors in investment decision-making, the gains of doing so outweigh the costs in the long term. These changes will benefit not only the current society but also all the upcoming future generations.

EIOPA advocates integrating the European sustainable requirements that were also integrated into other regulatory frameworks such as Solvency II. Therefore, EIOPA advises implementing Option 1.

6.4.3. ADVICE

EIOPA advises to require IORPs to take into account sustainability risks in investments decisions, and in so far as it is relevant for that purpose, to take into account the adverse

¹⁹¹ [European Commission, A European Green Deal, 11 December 2019.](#)

impact of their investments on sustainability factors (Option 1). For that purpose, Article 19(1)(b) of the IORP II Directive should be amended as follows:

“within the prudent person rule, IORPs shall take into account sustainability risks in their investment decisions and for that purpose, IORPs shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors. This shall be conducted in a proportionate manner to the nature, scale and complexity of the activities of IORPs.”

EIOPA advises an approach, in relation to the proposed requirement on the consideration of the adverse impact of investment decisions on sustainability factors for risk management purposes, that does not imply that IORPs have to disclose on this consideration in a statement as currently required under Article 4(1)(a) of the SFDR.

EIOPA is of the view that the consideration of the potential long-term impact on sustainability factors as part of prudent person rule requirements should not automatically trigger the application of Article 8 of the SFDR for a pension scheme, as long as IORPs do not disclose the potential long-term impact on sustainability factors in a way that is not in the context of sustainability risk management and that members and beneficiaries could perceive as promotion of environmental and social characteristics. Since IORPs shall take into account the potential long-term impact of their investment strategy and decisions on sustainability for the purpose of taking into account sustainability risks, the IORP can consider adverse impacts of the investment decisions on sustainability factors solely for the purpose of sustainability risk management and without the intention to promote this consideration as an environmental or social characteristics to members of the pension scheme.

EIOPA advises to include in Article 23 of the IORP II Directive the following provision: *“The remuneration policy shall include information on how the IORP takes into account the integration of sustainability risks in the risk management system”*.

EIOPA believes that IORPs which disclose principal adverse impacts on sustainability factors in accordance with the SFDR should also adapt their processes, systems and internal controls with respect to those disclosures. In Solvency II, this expectation is stated in a recital.

EIOPA advises to revise Article 28(2)(h) of the IORP II Directive to include in the own risk assessment (ORA) the application of scenario analysis to quantify the risk exposures to climate change as follows: *“an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change should be carried out, including, in a manner that is*

proportionate to the nature, scale and complexity of the risks inherent in their activities, the use of scenario analyses to quantify the risk exposures to climate change”.

EIOPA advises to include in Article 6 of the IORP II Directive the definitions of “sustainability risk” and “sustainability factors” set out in the SFDR¹⁹² or Solvency II Delegated Regulation.¹⁹³

6.5. THE FIDUCIARY DUTIES

6.5.1. IDENTIFICATION OF THE ISSUE:

IORPs have a duty to act in the best long-term interests of members and beneficiaries.

While members’ and beneficiaries’ interests have often been interpreted as solely being about seeking a financial return for their invested assets, it has become clear that many members and beneficiaries have preferences related to the sustainability performance of their investments.

Therefore, as part of IORP’s fiduciary role, IORPs should integrate members’ and beneficiaries’ sustainability preferences into investment decision-making while complying with the prudent person rule.

48% of NCAs reported in the survey that a) IORPs do not implement any practices to collect and reflect the views of their members on investing in sustainable assets or b) NCAs do not collect this information.

6.5.2. ANALYSIS

The Solvency II Delegated Regulation sets out that insurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors and, where relevant, that strategy and those decisions of an insurance undertaking shall reflect the sustainability preferences of its customers and should be taken into account in the product approval process. The IDD requires insurers to embed the sustainability preferences of the customers in the sale process as a top-up to the suitability assessment.

A clear distinction needs to be made with IORPs, due to their specificities:

¹⁹² [Regulation \(EU\) 2019/2088, Article 2\(24\).](#)

¹⁹³ [Delegated Regulation \(EU\) 2015/35, Article 1, points 55c to 55e.](#)

- ▶ In the enrolment phase, depending on the enrolment type, members can join voluntarily in a pension scheme or be enrolled through mandatory participation in a pension scheme by default (e.g., auto-enrolment). However, in these cases, there is no sale process or advice provided to members nor choice in many cases about whether to belong to the IORP;
- ▶ In the case of DB schemes or collective DC schemes, the ESG decision is up to the board of the IORP, where both employers and employees are represented. In such cases, it is not a matter of individual information provision;
- ▶ There are other types of schemes where members are not automatically enrolled in a pension scheme and are informed before they join that pension scheme about any relevant options available to them, including investment options¹⁹⁴.

The abovementioned specificities discard a “one-size-fits-all” approach for IORPs when requiring them to consider members’ and beneficiaries’ sustainability preferences where the investment decision is not based on individual preferences. In these cases, the board members have the final decision on the investments, be they sustainable or not, as long as they can justify how the sustainability factors and members’ sustainability preferences have been considered in the investment decision-making process.

Investment decisions of IORPs should reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences. In this case, IORPs should also provide evidence of how members’ preferences have been considered in the investment policy. This enables the IORP to determine and integrate sustainability preferences into the investment policy. It is important to take the proportionality principle into account.

IORPs should be required to pursue positive sustainability goals in their investment and engagement activity if it is in line with the members’ and beneficiaries’ preferences and it is in their long-term best interest.¹⁹⁵ Therefore, regarding the question of how IORPs can put members’ and beneficiaries’ preferences into practice, IORPs should not take these preferences as instructions.

¹⁹⁴ [Article 41 of IORP II Directive: Information to be given to prospective members.](#)

¹⁹⁵ [PRI & UNEP FI & The Generation Foundation, A Legal Framework for Impact: sustainability impact in investor decision making, July 2021.](#)

The LFI report presents two types of “investing for sustainability impact” (IFSI) based on the objectives pursued by the investor:

- “instrumental IFSI”, is where achieving the relevant sustainability impact goal is ‘instrumental’ in realising the investor’s financial return goals;
- “ultimate ends IFSI” is where achieving the relevant sustainability impact goal, and the associated overarching sustainability outcome, is a distinct goal, pursued alongside the investor’s financial return goals, but not wholly as a means to achieving them.

They should be viewed as a key input into an investment strategy that should be consistent with other investment principles of the prudent person rule¹⁹⁶.

When an IORP administers multiple schemes, each scheme's sustainability preferences should reflect the preferences of each scheme's members and beneficiaries. The establishment of each scheme's sustainability preferences and the collection of them are the fiduciary responsibility of the AMSB. This crucial role allows the AMSB to balance each scheme's members' and beneficiaries' unique sustainability preferences into one sustainability preference per scheme and align them with the broader prudent person rule.

The Principles for Responsible Investment¹⁹⁷ outline how members' and beneficiaries' sustainability preferences should be integrated into asset owners' investment decisions through guides and tools at each stage of investment decision-making¹⁹⁸.

In the survey, some NCAs pointed out that IORPs that collect the views of their members (e.g. via online surveys or organising physical panels to collect views of IORPs and also via external studies) might also encounter other issues:

- ▶ How to understand and align different members' and beneficiaries' sustainability preferences, i.e. different cohorts, gender, and backgrounds;
- ▶ The lack of engagement from members and beneficiaries;
- ▶ Members and beneficiaries may not have sufficient knowledge of sustainable investing and its effects on long-term returns to provide balanced views. In practice, questions are intrinsically complex, and members often do not have the expertise and the knowledge to provide the answers;
- ▶ The expected response rate to surveys is low. The outcome might not sufficiently represent the views of the survey group. Also, if not prepared properly, survey questions may lead to biased answers, which results in biased views of the sustainable preferences of the members and beneficiaries;
- ▶ A final obstacle is that different member views have to be averaged somehow to one view for a collective investment portfolio, which view may then not be representative of individual member views.

¹⁹⁶ Article 19(1)(c) of the IORP II Directive: "the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole".

¹⁹⁷ [PRI, What are the Principles for Responsible Investment?](#)

¹⁹⁸ [PRI, Understanding and Aligning with beneficiaries' sustainability preferences, 2021.](#)

EIOPA believes that further analysis, including potential guidance, should be carried out on how to address potential conflicts of the members’ needs arising due to differences between members’ characteristics, namely according to cohorts, gender, cultural backgrounds, etc. In this context, it might be difficult to establish prevailing views of members and beneficiaries “as a whole” as views on the desirability of sustainable investments are likely to be diverse.

Policy options

Option 0: No change

Option 1: To clarify that 'fiduciary duty' in a sustainability context should, within the boundaries of the prudent person principle¹⁹⁹, achieve financial returns in a sustainable manner and when IORPs can gauge sustainability preferences of the members and beneficiaries, IORPs shall reflect the sustainability preferences of its members and beneficiaries

Impact of the policy options

<p>Option 1: Integrating sustainability preferences when IORPs can gauge the sustainability preferences of the members and beneficiaries. EIOPA can issue guidelines to address the issues that IORPs encounter in different cases depending on the type of schemes or any other specificity.</p>		
Costs	Members	<ul style="list-style-type: none"> ▶ Members and beneficiaries may not have sufficient knowledge of sustainable investing, and therefore, they do not have the expertise and the knowledge to provide the answers. ▶ In DB schemes and some DC schemes where members do not make any investment decisions in the pre-enrolment phase but rather that they express their preferences through their representatives, their views have to be averaged somehow to one view for a collective investment portfolio, which may then not be representative for individual member views.
	IORPs	<ul style="list-style-type: none"> ▶ IORPs, which do not yet do so, will have increased costs to gather members’ and beneficiaries’ preferences. ▶ If IORPs do not properly design the process to gather members’ and beneficiaries’ views, this can lead to biased answers.

¹⁹⁹ Article 19(1)(c) of the IORP II Directive: “the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole”.

		<ul style="list-style-type: none"> ▶ Difficulties to make investment decisions based on membership preferences when taking into account IORPs' specificities: different types of members (active or deferred members and beneficiaries), pension schemes closed for new members, the sponsor's role in defining the investment policy, possible different investment options (possibly with different levels of ESG considerations) are offered to the members and it is up to the member to choose in which option(s) to invest.
	NCA's	<ul style="list-style-type: none"> ▶ NCA's should monitor and assess how IORPs integrate sustainability preferences when they can gauge the sustainability preferences of the membership. Therefore, it will have an impact by increasing NCA's tasks when conducting supervision.
	Other	/
Benefits	Members	<ul style="list-style-type: none"> ▶ Directly involving members and beneficiaries may promote members getting more involved in identifying ESG concerns that the investment decisions should consider as a key input.
	IORPs	<ul style="list-style-type: none"> ▶ The IORP board is ultimately responsible for the IORP's investment policy and for assessing how the members' and beneficiaries' preferences weigh in its overall investment decision and they should be able to justify their investment choices. ▶ IORPs will have flexibility on how to gauge and incorporate members' preferences in the investment policy.
	NCA's	<ul style="list-style-type: none"> ▶ Some NCA's will benefit from enhancing homogeneity on this issue between IORPs and insurers.
	Other	/

Comparison of policy options

As part of the European Green Deal²⁰⁰, the Climate Pact offers a space for everyone to share information, debate and act on the climate crisis, and be part of an ever-growing European climate movement.

Therefore, EIOPA believes that members and beneficiaries can take action for the sake of the planet with their investment decisions and benefit financially from sustainable investments. This also enables IORPs the opportunity to contribute to the green transition.

Comparing the benefits and costs, while taking into account the IORPs' specificities, EIOPA advocates Option 1.

6.5.3. ADVICE

EIOPA advises to amend Article 19 of the IORP II Directive by introducing a paragraph as follows: "Investment decisions of IORPs shall reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences and to the extent they are consistent with the investment principles set out in paragraph 1." (Option 1). The IORP II Directive should include a definition of "sustainability preferences" consistent with the definition set out for Solvency II in Article 1(55e) of Commission Delegated Regulation (EU) 2015/35.

Sustainability preferences should be integrated into the investment strategy in so far as they are consistent with the prudent person rule, in particular, to invest the assets in the best long-term interests of members. The requirement on integrating sustainability preferences should be applied in a proportionate manner.

Moreover, EIOPA is considering exploring whether and how NCAs can encourage IORPs to use technology-based solutions to gather sustainability preferences of members and beneficiaries and how to improve financial literacy²⁰¹ among European citizens to ensure that members and beneficiaries make informed sustainability decisions.

²⁰⁰ [European Commission, A European Green Deal, 11 December 2019.](#)

²⁰¹ [See, for example, Financial competence framework for adults in the European Union - OECD, published in January 2022 by the European Commission and the International Network on Financial Education run by the Organisation for Economic Co-operation and Development \(OECD\).](#)

6.6. STEWARDSHIP

6.6.1. IDENTIFICATION OF THE ISSUE

IORPs have a role in the sustainability transition through engagement with investee companies to improve their sustainability practices. Stewardship, especially as IORPs are long-term investors, is a critical strategy to push firms to reduce their climate footprint (GHG emissions). IORPs are significant shareholders in various companies, which means IORPs can make a major impact on their portfolio companies via voting and engagement. EIOPA remarks that IORPs should never put impact-making above following the members' and beneficiaries' interests.

6.6.2. ANALYSIS

The IORP II Directive mentions in recital 57 the risks related to the depreciation of assets due to regulatory change ('stranded assets'). In the future, non-green assets could possibly become riskier as they will be more strongly exposed to transition risk. If the asset value decreases because of less demand, they will provide higher yields, *ceteris paribus*. This might reward investors who are thinking of making investments in these securities.

However, divestment from stranded assets could imply certain risks, such as:

- ▶ Losing shareholder rights and the possibility to steward companies into a sustainable transition and possibly missing out on returns if a company transitions successfully;
- ▶ If IORPs divest while the financial markets are experiencing volatility, members might have to bear substantial losses that directly impact their pension savings.

The stewardship might be used in two ways:

- ▶ Not divesting but engaging with the company might be a better strategy, for example, by exercising voting rights to influence the company to make the transition towards, for instance, decarbonisation;
- ▶ Active ownership might be better than divesting, depending on whether the IORP is a large or small shareholder in the company. Larger shareholders can push the company towards a transition but for a smaller shareholder that might not be an effective strategy for engaging, especially if the remaining shareholders are not voting similarly. In this case, divesting might be a better solution to avoid ESG risks that are derived from the investment.

Under Article 3g (1) of the SRD II, IORPs must develop and publicly disclose an engagement policy describing how they integrate stewardship in their investment strategy or publicly disclose a clear and reasoned explanation of why they have chosen not to develop such a policy. However, these rules are not explicitly designed to deliver positive sustainability impacts as such. Therefore, while

the SRD II clearly aims at improving companies’ sustainability impacts, it does not oblige IORPs to pursue this aim actively.

In addition, a pension scheme falls under SFDR article 8 disclosure requirements when the investment strategy or objectives of a pension scheme include a decarbonisation objective that is achieved by engaging with investee companies or the pension scheme considers adverse impacts of investment decisions on sustainability factors and as a result, it discloses on the engagement with investee companies in the pre-enrolment information to prospective members and in the IORP annual report. The IORP II Directive should include the engagement policy in the context of stewardship. The EIOPA opinion on the use of governance and risk assessment documents in the supervision of IORPs²⁰² sets out IORPs’ engagement policy. It may be integrated into the statement of investment policy principles (SIPP) or another relevant document or alternatively prepared as a separate document, which should then be cross-referenced in the SIPP. The SIPP may also be an appropriate place for IORPs to provide a reasoned explanation for not preparing an engagement policy.

According to the survey analysis, there are no clear practices across countries on how IORPs include the engagement policy. Whether it is a separate document or included in the SIPP. Thus, Member States have the leeway to decide where IORPs will provide the engagement policy as long as IORPs publish this policy. The document must have concrete goals specifying how shareholder engagement, including members’ and beneficiaries’ sustainability preferences, are integrated into the investment strategy. However, in case IORPs do not prepare an engagement policy, IORPs should provide a well-reasoned explanation for not preparing an engagement policy.

Policy options

Option 0: No change

Option 1: Include in the section on documents concerning the governance of the IORP II Directive a new article on the stewardship policy.

Impact of the policy options

Option 1: Include in the section on documents concerning the governance of the IORP II Directive a new article on the stewardship policy		
Costs	Members	/
	IORPs	/

²⁰² [EIOPA, Opinion on the use of governance and risk assessment documents in the supervision of IORPs, EIOPA-BoS-19-245, 10 July 2019.](#)

	NCA's	/
	Other	/
Benefits	Members	<ul style="list-style-type: none"> ▶ To improve the transparency of the stewardship approach taken by the IORP. ▶ According to members' and beneficiaries' preferences, they can engage with investee companies on issues relevant to sustainability.
	IORPs	<ul style="list-style-type: none"> ▶ IORPs can engage with investee companies on issues relevant to sustainability. ▶ IORPs will improve their environmental and social performance.
	NCA's	/
	Other	<p>Several benefits for the environment and, thus, for society:</p> <ul style="list-style-type: none"> ▶ Society will benefit, provided that the stewardship requires integrating ESG considerations into decision-making. This is critical for influencing society's path towards a more sustainable future. ▶ Stewardship will promote the sustainability transition through engagement with investee companies.

Comparison of policy options

IORPs, through exercising their shareholder rights, can engage with investee companies on issues relevant to sustainability issues. This enables IORPs to contribute to developing the EU's sustainable corporate governance agenda²⁰³. Therefore, EIOPA recommends implementing Option 1.

6.6.3. ADVICE

EIOPA advises that IORPs should consider a stewardship approach to address sustainability risks in a proportionate manner, by way of engaging with investees to support the transition towards more sustainable business activities in a consistent way to comply with investment principles and serve members' and beneficiaries' best interests (Option 1). This engagement should also reflect the members' and beneficiaries' sustainability preferences when IORPs can gauge the sustainability preferences of the members and beneficiaries. Such requirements

²⁰³ [European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence, 23 February 2022.](#)

could be included in the section on ‘Documents concerning governance’ of the IORP II Directive.

EIOPA advises to review Article 30 to clarify that IORPs’ shareholder engagement policy may be integrated into the Statement of investment policy principles (SIPP) or another relevant document or alternatively prepared as a separate document, ensuring consistency with the disclosure on the engagement policy in the IORP annual report, as required under SFDR. However, where IORPs do not prepare an engagement policy, they should provide a reasoned explanation for not preparing it.

6.7. BROADER SOCIETAL GOALS

6.7.1. IDENTIFICATION OF THE ISSUE

The EU and the UN²⁰⁴ share common goals for a sustainable future.

Sustainable Development Goals (SDGs) are core principles of the EU. The SDGs are also a priority objective for the EU’s internal and external policies. The UN 2030 Agenda includes 17 SDGs²⁰⁵ that should apply universally to all countries. It is a commitment to eradicate poverty and achieve a sustainable world by 2030 and beyond, with human well-being and a healthy planet at its core. SDG number 5 on gender equality includes among its targets to “recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate” and “undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws”.

When considering broader societal and environmental goals and in order to analyse the impact of IORPs’ investments on the environment and society, EIOPA includes, based on the fact-finding of the survey analyses, some conclusions on the pension gap: reducing the pension gaps has a significant impact on the social aspect of sustainability.

²⁰⁴ [European Commission & United Nations, The EU and the United Nations – common goals for a sustainable future, September 2015.](#)

²⁰⁵ [United Nations, Gender equality and women's empowerment.](#)

The self-employed and gig workers are a heterogeneous group, representing a large share of the working-age population in some Member States. Many of them may be at risk of old age poverty in the future²⁰⁶.

Most of the time, women are involved in non-standard forms of work with lower incomes and shorter careers, often due to maternity and other childcare leave, which affect women more than men.

The spread of non-standard forms of work and the persistent gender gaps in pay, career, and pensions are, among others, one of the main issues to tackle in order to reduce the pension gap by focusing on how to support access of these under-pensioned groups to an occupational pension system and provide them with sustainable and adequate pension protection.

According to the 2021 pension adequacy report,²⁰⁷ the differences between the pension amounts received by women and men are continuing to narrow, albeit slowly. Gender inequalities become more noticeable in old age. In the EU-27, the gender gap in old-age poverty is larger than in working age, while the gender pension gap caused by the aggregated impact of labour market inequalities remains important (29.5 % in 2019) despite a slight decrease (from 32.3 % in 2016). There has been little convergence between countries.

The majority of the NCAs (63%) expressed in the survey that the design of pension schemes provided by IORPs in their country does not include any features or options to make the scheme more inclusive for vulnerable groups.

EIOPA 2022 Consumer Trends Report²⁰⁸ shows that there is a gender gap in access to insurance and pension products. According to the Eurobarometer survey, 56% of women – vs 46% of men – say they are not confident they would have enough money to live comfortably through retirement.

EIOPA wants to bring to the attention the main findings from the MIGAPE project²⁰⁹, in which the caring activities and the psychology of labour market decisions are analysed to draw conclusions on the gender pension gap (GPG).

Caring activities are an important factor underlying the significant gender differences in labour market participation rates.

²⁰⁶ I.e., Representing a fifth of the working age population in NL, self-employed have been identified as at risk of old age poverty. The Dutch government is looking at proposals to improve the participation of self-employed in occupational pensions.

²⁰⁷ [European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2021 Pension Adequacy Report, June 2021.](#)

²⁰⁹ [European Union MIGAPE project, The future of Gender Pension Gaps, March 2021.](#)

It is concluded, first, in order to reduce the GPG further over time, it is necessary to reduce the difference in pay between men and women. Part of this earnings gap may be due to women taking on more caring activities, in particular, childcare. Many countries have schemes that compensate to some extent for periods of caring (e.g. the Belgian pension system compensates very well for the caring period of 6 years, which could be either part-time or full-time).

Secondly, another way to reduce the GPG might be to enhance the framing of the communication about the impact of women's labour market decisions on future pension outcomes in order to facilitate their evaluations of these decisions. Increasing financial knowledge of pensions and advancing women's self-assessed control over their labour market decisions are highlighted as critical drivers to affect women's future pensions.

6.7.2. ANALYSIS

EU governments face a huge challenge in providing their citizens with adequate and sustainable pensions. As European pension systems vary greatly, the size of the pension protection gaps differs substantially between countries. However, a commonality in most Member States is that the pension gaps increase over time.

The gender equality strategy 2020-2025²¹⁰ notes that accumulated lifetime gender employment and pay gaps, including part-time work and career gaps linked to women's caring responsibilities, result in a wide pension gap and contribute to a higher poverty risk for older women.

The survey results addressed the features and options included in the design of the pension schemes to reflect the realities of the labour market, to offer adequate and sustainable pensions and to make pension schemes more inclusive for vulnerable groups (e.g., women with part-time work, temporary employees, self-employed, gig workers, and minority ethnic groups).

The analysis offers the conclusion that most NCAs, 17 out of 27 (CZ, CY, DK, GR, FI, FR, DE, IE, LV, LU (CSSF), LU (CAA), MT, NO, PT, SI, SK, HR for Closed-ended Voluntary Pensions Funds (DC)), indicated that the design of pension schemes provided by IORPs in their country does not include any features or options to make the scheme more inclusive for vulnerable groups.

Of the other NCAs, 10 out of 27 (AT, BE, BG, ES, IT, LI, NL, PL, RO, SE, HR for Pension Insurance Companies (DB)) responded that the design of pension schemes provided by IORPs in their country include some features or options to make the scheme more inclusive for vulnerable groups. In the abovementioned Member States, it is forbidden to discriminate against people if they would be otherwise eligible to enter the pension fund. Only one Member State (ES) actively promotes measures that are aimed at mitigating the pension gap. Examples of these measures are the

²¹⁰ [European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2021 Pension Adequacy Report, June 2021](#)

continuation of contributions in the case of reducing the working hours and the preservation of the employment relationship while taking leave.

Answers for lessening the gap often lie in areas of social policy outside of EIOPA's mandate. The consequences of doing nothing now would be irreversible, shifting the burden of the pension gap to future generations and ultimately resulting in pension poverty and/or a derailment of public finances.

6.7.3. ADVICE

EIOPA advises raising awareness of to what extent Member States can take active steps to reduce the gender pension gap, which impacts also the social aspect of sustainability. The gender pension gap might be reduced, for instance, by enhancing the awareness of women of the pension implications of their career steps. A step to ensuring adequate and sustainable pensions could be improving transparency for policymakers and citizens. Therefore, the pension dashboard and the pension tracking systems are fundamental tools to tackle these challenges by identifying emerging gaps through better and more comprehensive information. Another step could be for governments to implement appropriate reforms to supplement the public pay-as-you-go schemes.

7. DIVERSITY AND INCLUSION (D&I)

7.1. EXTRACT FROM THE CALL FOR ADVICE

2. *Complementing the above analysis, the Commission requests an assessment of possible options in relation to the following areas:*
 - c. *Exploring prudential requirements to include diversity and inclusion issues in relation to management bodies. This analysis should explore the need for such requirements in view of the objectives to ensure a broad representation in the management body in order to facilitate independent opinions and critical challenge and to more effectively monitor management and therefore contribute to improved risk oversight and resilience of institutions.*

7.2. RELEVANT LEGAL PROVISIONS

The IORP II Directive sets out in Article 21 general governance provisions requiring IORPs to have in place an effective system of governance which provides for sound and prudent management of their activities. The provision also regulates the number of persons who can effectively run the IORP. Based on a reasoned assessment that takes into account the role of social partners in the overall management of the IORP, Member State can allow only one person to effectively run an IORP.

Article 22 outlines the necessary requirements for individuals who are effectively in charge of managing an IORP. For such individuals to be deemed "fit", they must possess suitable qualifications, knowledge, and experience, which collectively provide the capability to manage the IORP in a responsible and prudent manner. Being "proper" means that these individuals should have an established reputation of honesty and integrity.

The IORP II Directive does not require IORPs to have a diversity and inclusive policy in place, nor to set a target for the underrepresented gender in the management or supervisory bodies, in contrast to the European banking regulation. The banking regulation includes legal provisions in relation to diversity criteria for the composition of management bodies in Regulation (EU) No 575/2013²¹¹ the (Capital Requirements Regulation; hereafter CRR) and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the

²¹¹ [Regulation \(EU\) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation \(EU\) No 648/2012.](#)

prudential supervision of credit institutions and investment firms²¹² (Capital Requirements Directive; hereafter CRD). The ESAs have issued guidelines to further develop D&I requirements, in particular, EBA Guidelines on internal governance under Directive (EU) 2019/2034 and Joint ESMA and EBA Guidelines on the suitability of members of the management body and key function holders²¹³.

The CRD requires a policy promoting diversity in management or supervisory bodies when recruiting members²¹⁴. Such a policy should, for instance, encourage institutions to select candidates from shortlists including both genders²¹⁵.

Also, the CRD requires that the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target.

This provision has been stated in the Joint Guidelines of EBA and ESMA that sets out the diversity policy for significant institutions and it includes a quantitative target for the representation of the underrepresented gender in the management body and also specifies an appropriate timeframe within which the target should be met and how it will be met. The target should be defined for the management body collectively. In all other institutions, in particular with a management body of fewer than five members, the target may be expressed in a qualitative way²¹⁶.

The CRD states that remuneration policies²¹⁷ and practices shall be gender-neutral and defines a gender-neutral remuneration policy²¹⁸.

Within the technical criteria on transparency and disclosure, the CRR includes in Article 435(2) that institutions shall disclose and update at least annually the following diversity-related information:

- a) the number of directorships held by members of the management body;
- b) the recruitment policy for the selection of members of the management body and their actual knowledge, skills and expertise;

²¹² [DIRECTIVE 2013/36/EU \(CRD\): Recital 60 of CRD V, Article 3, Article 74, Article 88 and Article 91.](#)

²¹³ ESMA and EBA, [Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU, 2 July 2021.](#)

²¹⁴ [Article 91 of CRD.](#)

²¹⁵ [Recital 60 of CRD IV.](#)

²¹⁶ ESMA and EBA, [Guidelines on the assessment of the suitability of members of the management body and key function holders, 2 July 2021.](#) Application of the proportionality principle.

²¹⁷ [Article 74 of CRD](#) and [EBA, Final report on Guidelines on sound remuneration policies under Directive 2013/36/EU, 2 July 2021.](#)

²¹⁸ [Article 3\(65\) of CRD.](#)

- c) the policy on diversity with regard to the selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which these objectives and targets have been achieved.

7.3. PREVIOUS EIOPA REPORTS

EIOPA sent a letter on diversity and inclusion to European institutions in April 2022²¹⁹. EIOPA suggested to include requirements on the diversity of management boards and gender-neutral remuneration practices in the insurance and pension regulatory frameworks when amending, respectively, the Solvency II Directive and the IORP II Directive. In their reply, the COM noted this proposal was also an inspiration for the proposal for a Corporate Sustainability Reporting Directive.²²⁰

The proposal extends the scope to large companies and companies listed on regulated markets. It also includes a description of the diversity policy applied to the undertaking's administrative, management and supervisory bodies. The diversity policy should consider inter alia, gender, age, educational and professional backgrounds, objectives of the diversity policy, how it has been implemented, and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case.

The proposal of EIOPA's letter was to align the diversity requirements between banks, insurers and IORPs based on what CRD has already laid out for the banking sector.

7.4. SOME NATIONAL PRACTICES

There are examples of diversity and inclusion requirements at a national level. In the following, the situation in IE and NL is described.

In 2018, the Central Bank of Ireland developed its first diversity and inclusion vision, comprising four strands – a diverse workforce, being a thought leader on D&I, how to harness difference to its benefit, and having a positive influence on the behaviour of the financial industry. More recently, its D&I Strategy 2022 – 2026²²¹ sets out key deliverables and strategic enablers, with a particular

²¹⁹ [EIOPA, Letter to the European Parliament, the Council of the EU and the European Commission on diversity in management bodies, 22 June 2022.](#)

²²⁰ [European Commission, Document Ares\(2022\)4355620, 2022.](#)

²²¹ [Central Bank of Ireland, Diversity and Inclusion Strategy 2022-2026, 2022.](#)

focus on awareness and education; data and insights; policies and practices; talent attraction and retention; and the role of leaders in setting the tone from the top.

The Dutch pension industry²²² has set itself standards on multiple topics, including diversity, in the Code of the Dutch Pension Funds, which came into effect in January 2014 and was revised and reclassified in 2018.

The standards in the Code are a supplement to legislation and regulation that focus on procedural aspects. Pension funds may comply with this Code according to the “comply or explain” principle.²²³ Diversity plays a role under Theme 5-Appointing carefully.

It states *inter alia* that “the composition of fund bodies is in terms of suitability, complementarity, diversity, reflection of stakeholders and continuity, laid down in policy. Explanation: Fund bodies take into account education, background, personality, gender, and age”. Norm 31 of the Code of the Dutch Pension Funds, states²²⁴ that a pension fund’s board of trustees shall include at least one man and one woman, and it must comprise at least one member over the age of forty and one member under the age of forty. The board also prepares an action plan to promote diversity.

A company will not be penalised for failing to meet the quota, but it must explain in its annual report the reasons for its failure to meet the targets, how it attempted to meet the requirements, and how it plans to be successful in the future. When recruiting candidates, the diversity policy is taken into account in the formulation of a profile description and the diversity standards will be taken into account when establishing the requirements for a vacant position. Norms 37 and 38 states that there will be an active endeavour to search for candidates that meet diversity goals and that the assessment will include consideration of the diversity goals.

7.5. D&I IN MANAGEMENT BODIES

7.5.1. IDENTIFICATION OF THE ISSUE

The increasing concerns from authorities, investors, consumers, and employees on diversity and inclusion issues build momentum for changes and highlight the need for setting clear expectations in the D&I field in all financial sectors, including in the pension sector.

Greater diversity should increase employees having a wider range of views across organisations, while inclusion should create the necessary environment for individuals to be able to express their

²²² [Pensioen Federatie, Code of the Dutch Pension Funds: Norm 31, 2018.](#)

²²³ [Pensioen Federatie, Code of the Dutch Pension Funds: Page 10, 2018.](#)

²²⁴ [Pensioen Federatie, Code of the Dutch Pension Funds: Norm 33, 2018.](#)

views, speak up, and raise concerns. Combined, this should reduce the risk of group thinking, which would improve decision-making within firms, consumer outcomes, and the standards of market conduct.

Promoting gender equality in leadership roles in the private sector is a pressing policy challenge for all countries. Across G20²²⁵ and OECD countries, women make up only about one-third of managers. They are also far less likely than men to become chief executive officers (CEOs) or to sit on boards²²⁶.

Over the last nine years, the proportion of women on the boards of the largest listed companies across the EU has more than doubled: from 12 % in October 2010, to 28 % in April 2019²²⁷. The countries that introduced legislative quotas were driving progress, but soft measures have also worked in some countries. However, gender balance has not made significant improvements in the countries that have not taken any action. Furthermore, boards are still far away from being gender balanced.

In NL, according to the result of the latest monitoring of norm 33 of the code, among a total of 181 pension funds in 2020, the conclusions are the following:

- ▶ 60 IORPs comply with norm 33 (i.e., at least one woman and one young person);
- ▶ 24 IORPs do not have a woman and do not have a young person;
- ▶ 11 IORPs do not have a woman but do have a young person;
- ▶ 86 IORPs do have a woman but do not have a young person.

In the pension sector in the UK, according to recent research²²⁸, it was revealed that professional trustee firms are playing an essential role in improving D&I in UK pension scheme boards. The study, which surveyed over 100 pension trustees, showed that, on the whole, pension trustee boards remain overwhelmingly male, over the age of 45, and with tertiary education. It also showed that 75% of respondents sit on boards where over 60% of members are male, while two in five sit on boards where half the board are 46-60 years old.

According to the responses to the survey, most of NCAs do not (77.7%) have a definition of diversity and inclusion and do not have any requirements in their national regulation to ensure that the underrepresented gender is represented at the management board level. Unlike the banking

²²⁵ Intergovernmental forum comprising 19 countries and the EU.

²²⁶ [OECD, Policies and Practices to Promote Women in Leadership Roles in the Private Sector, 2020.](#)

²²⁷ [European Institute for Gender Equality, Legislative quotas can be strong drivers for gender balance in boardrooms, 28 June 2019.](#)

²²⁸ [Mallowstreet, Diversity Equality and Inclusion Report 2022, 2022.](#)

regulation that promotes diversity and gender balance of the management body, there is no reference to diversity and inclusion in the IORP II Directive.

7.5.2. ANALYSIS

EIOPA's approach²²⁹ to diversity and inclusion goes beyond gender balance given that D&I embrace multidimensional aspects and can include inter alia, age, gender identity, sexual orientation, education, religion or belief, ethnicity, socio-economic and/or cultural background, nationality, disability, which may contribute to better monitoring of executive behaviour. A multidimensional approach will ensure adequate representation in the management body of the population as a whole and avoid "groupthink".

Some studies²³⁰ show that diversity alone does not drive inclusion. Without inclusion, the crucial connections that attract diverse talent, encourage their participation, foster innovation, and lead to business growth will not happen. According to the survey's responses, most NCAs do not have a D&I definition in place (e.g. a national definition or a definition applying to the financial services sector), and there is not a clear view of what diversity and inclusion mean.

The IORP II is a prudential Directive and should ensure a sound system of governance where D&I enhances better decision-making in the management board by *mitigating biased decision-making* and, thus, enabling the board to make better decisions. Therefore, it is necessary for the IORP II review to put in place an effective system of governance that provides diversity and inclusion (a) for a sound and prudent investment management of their activities and (b) for the assessment of the suitability of members of the management body for achieving good outcomes for members and beneficiaries²³¹ on a similar basis as the banking system in CRR/CRD. This will enhance cross-sectoral consistency and reduce potential risk originating from regulatory arbitrage within the EU financial system. Cross-sectoral convergence on D&I is also important for financial institutions to enhance their performance and contribute to a fairer and more inclusive society.

The aim is to advance diversity and inclusion in IORPs' management bodies by including related provisions in their policies, governance arrangements, remuneration policies, and disclosure requirements. It is not only to avoid any discriminatory related practices but also to actively promote equality between men and women.

²²⁹ [EIOPA, EIOPA Strategy 2023-2026, 30 September 2022.](#)

²³⁰ [COQUAL, Innovation, Diversity and Market Growth, September 2013.](#)

²³¹ Numerous studies show that the more diverse and the more inclusive an organization is, the better it performs: *Global diversity and inclusion survey*: PwC (87% of global businesses say diversity and inclusion is an organizational priority); [D&I for Profitability: Why Diversity Matters](#); [D&I for Productivity: Hacking Diversity With Inclusive Decision-Making](#); [D&I for Creativity and Innovation: Board of Directors' Diversity, Creativity, and Cognitive Conflict](#).

In the context of sustainability, IORPs must reflect D&I considerations in their decision-making process. Female bank directors are more likely to care about long-term societal issues, including climate change. In the working paper No. 2741 / October 2022²³², the ECB investigated whether and to what extent a greater female representation in banks' boardrooms influences banks' capabilities in "greening" the economy via lending decisions. The paper concludes that the "greening" effect of the female members in banks' boardrooms is stronger in countries with more female climate-oriented politicians. This aspect is particularly important given the social role of IORPs and the impact on the social part of the "S" factor in the sustainability investment decisions.

D&I issues should be addressed in IORPs' recruitment policies more generally. Such policies should, for instance, encourage IORPs to select candidates from shortlists, including persons that are different in relation to gender and any other D&I aspect such as age, geographical provenance, and educational and professional background. Nonetheless, any of these criteria should be one of the criteria for the composition of management bodies²³³ considering that:

- ▶ Diversity can embrace different features/aspects mentioned above;
- ▶ All of the candidates should be fit and proper for the management, as set out in Article 22 of the IORP II Directive²³⁴, and proving qualifications, knowledge and experience is a mandatory requisite. The ECB's guidelines on fit-and-proper assessment include diversity within the collective suitability of the management body;²³⁵
- ▶ Due to the possible difficulties in recruiting board members, the proposal is to promote and encourage IORPs rather than require IORPs to include D&I considerations in the recruitment policy.

The administrative, management, and supervisory bodies (AMSB) of some IORPs are based on representatives from the social partners selected by sponsoring employers and employees. Therefore, the provisions on D&I should also be applied to their representatives to ensure D&I can be considered by the social partners when establishing the governance structures of the IORP they are setting up through collective bargaining agreements.

In addition, recognising that gender balance is of particular importance to ensure adequate representation of the population, the CRD requires 'significant' institutions to establish a nomination committee which must (i) decide on a target for the representation of the

²³² BIS, [Gender diversity in bank boardrooms and green lending: evidence from euro area credit register data, October 2022.](#)

²³³ [Recital 60 of CRD IV.](#)

²³⁴ Article 22 of the IORP II Directive: Individuals in charge of running the IORP must demonstrate the requisite qualifications, knowledge, and experience, thus fulfilling the standards for fit and proper management.

²³⁵ Please for further information check section 3.5: [ECB, Guide to fit and proper assessments, December 2021.](#)

underrepresented gender in the management body, and (ii) prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target.

Joint Guidelines of EBA and ESMA that set out the diversity policy for significant institutions also state that “In all other institutions, in particular with a management body of fewer than five members, the target may be expressed in a qualitative way”.

Acknowledging the importance of having a gender balance in the management board and taking into account that most of the NCAs do not have any requirements in Level 1/2/3 regulation to ensure that the underrepresented gender is represented at the management board level, EIOPA believes IORPs should also set a target in IORP’s policy in case of underrepresented gender on the basis of merit.

EIOPA recognises that the one-size-fits-all approach is not valid for all IORPs and wants to avoid the imposition of rules that would not be effective or appropriate for them, given the limited size of boards. Therefore, the target for the representation of the underrepresented gender should be set in a manner that is proportionate to the nature, scale and complexity of their activities (e.g., the target may be expressed qualitatively as an expectation to reach a gender balance rather than quotas). Within this target, IORPs with few resources might explore a “comply or explain” approach, providing leeway to reach the target but still having to publicly state why they are missing the targets and what measures they are taking to redress the balance.

EIOPA is of the view that the fit and proper requirements, as set out by the IORP II Directive, take precedence over the proposed diversity & inclusion requirements. Regarding setting the target, the candidates for the management board are required to fulfil fitness and propriety requirements. Therefore, the gender quota does not impact the selection of the best and most suitable candidates. In a selection process for being nominated to the management board, women can be more likely to engage in a competition if there is preferential treatment, while men’s engagement will not be affected.

Another aspect where D&I can be tackled is within the remuneration policy. The CRD in Article 74 states that remuneration policies²³⁶ and practices shall be gender neutral, meaning a remuneration policy based on equal pay for male and female workers for equal work or work of equal value²³⁷. In this regard, the EU is acting by moving towards a Pay Transparency Directive²³⁸ to strengthen the

²³⁶ [EBA, Final report on Guidelines on sound remuneration policies under Directive 2013/36/EU, 2 July 2021.](#)

²³⁷ [Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.](#)

²³⁸ [European Commission, Proposal for a Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, 4 March 2021.](#)

application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

EIOPA recognises there is no formal definition of D&I at the European level.

According to the analysis of the survey:

- ▶ Most of the NCAs, 21 out of 27, (AT, BE, BG, CY, CZ, GR, ES, FI, IE, IT, LV, LI, LU (CSSF), LU (CAA), MT, NO, PL, PT, SK, SI, SE) do not have a D&I definition.
- ▶ In the countries that use any D&I definition, there seems to be confusion on what diversity and inclusion mean, as NCAs that have a definition of D&I only mention diversity criteria but do not mention inclusion.

It could be helpful to set out a definition of D&I at the European level. The definition should be consistent across all financial services sectors to avoid inconsistency issues in financial conglomerates that include entities from different sectors. The starting point for the discussion of a D&I definition could be the following descriptions/specifications:

- ▶ Diversity describes the existence and acceptance of differences between people. This includes but is not limited to characteristics such as, inter alia, age, gender, geographical provenance and educational and professional background. This includes differences in cultural and socio-economic background and differences in education, experiences and style of thought;
- ▶ Inclusion is about creating an environment where people feel heard, acknowledged, and valued regardless of their differences and where they can put their diverse talents to the best use.

Policy options

Option 0: No change

Option 1: To include a recruitment policy promoting diversity in management or supervisory bodies, D&I should also be addressed in IORPs' remuneration policy, to include a target in IORPs' policy in case of underrepresented gender and to include a D&I definition provided by the COM.

This option consists of:

- ▶ Including a recruitment policy promoting diversity and inclusion on management or supervisory bodies, encouraging IORPs to include in the recruitment policy the selection of candidates from shortlists including gender and any other D&I feature on a similar basis as the banking system in CRR/CRD. The documentation related to the recruitment and selection shall contain no reference of a discriminatory nature and should address the gender imbalance and any other D&I feature subject to the fulfilment of the fit and proper requirements;
- ▶ Addressing diversity and inclusion in IORPs' remuneration policy by:

- Including that the remuneration policy should be gender-neutral;
 - Including a definition of the gender-neutral remuneration policy, meaning a remuneration policy based on equal pay for male and female workers for equal work or work of equal value.
- ▶ Including a target in the IORP’s policy for the underrepresented gender on the basis of merit:
 - a) To ensure that there is a target included in IORP’s policy for the underrepresented gender in the management bodies of IORPs;
 - b) This target should be proportionate to the nature, scale and complexity of their activities. Where proportionate, IORPs may explore a “comply or explain” approach providing them leeway in meeting the target by not imposing penalties for falling short, but rather that IORPs will have to publicly state why they are missing the targets and what measures they are taking to redress the balance.
 - ▶ Advising the COM to provide a legal definition of diversity and inclusion in the prudential regulation.

Impact of the policy options

Option 1: To include a recruitment policy promoting diversity in management or supervisory bodies, D&I should also be addressed in IORPs' remuneration policy, to include a target in IORP’s policy in case of underrepresented gender and to include a D&I definition provided by the COM.		
Costs	Members	/
	IORPs	The target for underrepresented gender might not be reachable for smaller IORPs, but this is mitigated by the envisaged proportionate approach. The AMSB of some IORPs is based on representatives from the social partners. There is concern about whether provisions on D&I would have to be applied to social partners to reach the desired gender proportions.
	NCAAs	The definition of Diversity & Inclusion may be changed in the future.
	Other	/
Benefits	Members	This will ensure adequate representation in the management body in terms of diversity and inclusion. This, in turn, may contribute to better financial outcomes and long-term improvements for members and beneficiaries.

		<p>Management bodies will more likely develop a good understanding of the diversity of their membership, which will aid their decision-making. These new requirements respond to the diverse needs of (prospective) members and beneficiaries with respect to pension schemes and contribute to preventing unlawful discriminatory practices.</p>
	<p>IORPs</p>	<p>Promoting diverse and inclusive boards strengthens IORPs:</p> <ul style="list-style-type: none"> ▶ In investment management by improving decision-making, risk management, and resilience of IORPs; ▶ In the system of governance by facilitating independent opinions and critical challenges and mitigating biased decision-making and possibly increasing IORPs’ stability²³⁹; ▶ by contributing to social objectives (D&I objectives) and mitigating and adapting to social risks, via their investments, enabling more accessible pensions and supporting financial inclusion among the traditionally underserved population. <p>D&I in the recruitment policy will increase the pool of potential candidates for management bodies: The management body will understand how to create more inclusive recruitment processes to increase opportunities to attract more diverse candidates to the management bodies.</p> <p>It can also be used to identify the barriers to the engagement and application for a position in the management body and ways in which those barriers can be removed.</p> <p>Broadening the appeal of management bodies and attracting the right mix of individuals and skills to complement and enhance the board.</p> <p>D&I in the remuneration policy will contribute to gender equality in remuneration.</p> <p>The target in IORP’s policy for the underrepresented gender will contribute to a more gender-balanced board.</p>

²³⁹ For instance, [EBA, Benchmarking of diversity 2019, 2019.](#)

		<ul style="list-style-type: none"> ▶ Fairer gender balance in top management positions not only helps individual companies and businesses as a whole; it also advances society. ▶ It is important to understand the level of diversity among management bodies to know where there is an underrepresentation. <p>Having a European D&I definition will provide IORPs with a clear basis for achieving D&I objectives.</p>
	NCA	/
	Other	<p>The improvement of D&I in IORPs will impact the aspects of sustainability of investees companies: gender diversity is frequently considered as a social factor (“S”).</p> <p>Female corporate directors and women, in general, are more likely to care about long-term societal issues, including climate change.²⁴⁰</p> <p>Fairer gender balance in top management positions not only helps individual companies and businesses as a whole but also advances society more generally.</p>

Comparison of policy options

EU institutions and bodies are committed to retaining diversity and creating an inclusive environment in different areas and at different levels.

EIOPA advocates to integrate the European approach to reach a more diverse and inclusive society. Therefore, it would be a missed opportunity not to use the review of the IORP II Directive to enrich IORPs’ management boards through diversity and inclusion measures.

Having considered all the benefits that D&I will bring to the management boards, IORPs and society as a whole, EIOPA supports Option 1.

²⁴⁰ [ECB, Working Paper Series No. 2741: Gender diversity in bank boardrooms and green lending: evidence from euro area credit register data, October 2022.](#)

7.5.3. ADVICE

EIOPA recommends that diversity and inclusion are one of the criteria for the composition of management bodies. Diversity and inclusion should also be addressed in IORPs' recruitment policy more generally (Option 1). Such policy should, for instance, encourage IORPs to select candidates from shortlists, including gender balance. For that purpose, EIOPA advises the following amendments to the IORP II Directive:

- ▶ The inclusion of a new provision in Article 21 as follows: “Member States or competent authorities shall require IORPs and, where applicable, their respective nomination committees to engage a broad set of qualities and competencies when recruiting members to the management or supervisory body. For that purpose, IORPs and, where applicable, their respective nomination committees shall put in place a policy that promotes diversity and inclusion in the management or supervisory body. The policy shall, where relevant, take into account that the administrative, management or supervisory body includes representatives of social partners. The policy shall be applied in a manner that is proportionate to the nature, scale and complexity of the activities of IORPs”.
- ▶ The inclusion of a new provision in Article 21 to introduce a target for underrepresented gender in the management or supervisory bodies for IORPs, as follows: “Member States shall require IORPs to decide on a target for the representation of the underrepresented gender in the management or supervisory body and prepare a policy on how to increase the number of the underrepresented gender in the management or supervisory body in order to meet that target in a manner that is proportionate to the nature, scale and complexity of the activities of the IORPs. The target shall consider the members of the management or supervisory body that are selected by the sponsor of the IORP and shall not apply to IORPs where the number of members of the management or supervisory body that are selected by the sponsor of the IORPs is three or fewer.
- ▶ The introduction of an additional principle for remuneration policies in Article 23(3) as follows: “remuneration policies and practices shall be gender-neutral”.
- ▶ The introduction of the following definition in Article 6 of the IORP II Directive: “‘gender-neutral remuneration policy’ means a remuneration policy based on equal pay for male and female employees for equal work or work of equal value”.

EIOPA advises that a legal definition of diversity and inclusion is included in the prudential legislation. Cross-sectoral consistency of such a definition would be important. EIOPA welcomes the alignment of D&I matters throughout the diverse financial sector regulations.

EIOPA believes that there are other areas where improvements in relation to diversity and inclusion are possible. For example, investment decisions can have an impact on the environment but also on socio-economic factors, like diversity and inclusion. Diversity and inclusion are relevant for the design of pension plans as well as for the system of governance of IORPs, also to facilitate independent opinions and critical challenge and to mitigate biased decision-making.

7.6. REPORTING ON D&I

7.6.1. IDENTIFICATION OF THE ISSUE

There is a lack of information on D&I in the management bodies. According to the survey, the majority of NCAs (89%) do not collect any information on D&I. Some NCAs collect fit and proper-related information as part of personal details contained in the notification to appoint a candidate, but this information is not gathered to monitor and assess the effectiveness of D&I.

However, there is evidence to suggest that diversity and inclusion in the wider financial services industry remains an issue that needs attention and improvement.

The Central Bank of Ireland (CBI) has a dual focus on D&I as an employer and regulator. As a regulator, CBI has already:

- ▶ Published reports where they measure, monitor and publish information on the level of diversity within the Irish financial services²⁴¹ sector;
- ▶ Published guidance on how to improve diversity and inclusion;
- ▶ Committed to the issue by implementing its strategy on diversity and inclusion²⁴².

The review, based on a sample of 11 insurance firms, considered firms' policies, procedures, practices, monitoring of diversity and inclusion, and analysed remuneration by gender. The assessment found an overall lack of commitment to diversity and inclusion among the group of firms.

- ▶ The majority of firms studied did not have a D&I strategy;

²⁴¹ [Central Bank of Ireland, Thematic Assessment of Diversity and Inclusion in Insurance firms, July 2020](#) and [Central Bank of Ireland, Gender Pay Gap Report 2022, December 2022](#).

²⁴² [Central Bank of Ireland, Diversity and Inclusion Strategy 2022-2026, 2022](#).

- ▶ Firms that had introduced D&I initiatives were not tracking, monitoring, or assessing the effectiveness of these initiatives;
- ▶ Diversity was not given sufficient consideration in senior recruitment and succession planning;
- ▶ Women represented just 24% of the top 10 earners, despite accounting for 51% of the total workforce;
- ▶ For average fixed remuneration, in 72% of cases, male employees earned more than their female colleagues in the same grade.

In the UK, The Pensions Regulator has found that more than one-third of the pension schemes that collect trustee diversity data have no intention of using it. The Pensions Regulator publishes an action plan to boost boards' diversity and inclusion.²⁴³

EIOPA also wants to point out the main conclusions of the Gender Equality Forum 2022²⁴⁴ in relation to data collection: "Without data, inequalities remain invisible and are not addressed in policymaking. We need reliable, robust, and comprehensive data to guide and direct our resources to those who need it most – those who fall through the cracks, those that can't be easily categorised by traditional systems, and those who have historically been underrepresented in our societies".

The main takeaways of the Forum are:

- ▶ "We must standardise and systematise data collection at Member States and EU level."
- ▶ "We must join forces to bring intersectionality into quantitative data, qualitative data, and research design."
- ▶ "We must include civil society organisations as part of the process."

7.6.2. ANALYSIS

The majority of NCAs (89%) do not collect any information on D&I.

In the banking regulation, the CRR sets out in Article 435 (2) (a) to (c): "Institutions shall disclose the following information, including regular, at least annual updates, regarding governance arrangements:

(a) the number of directorships held by members of the management body;

(b) the recruitment policy for the selection of members of the management body and their actual knowledge, skills and expertise;

²⁴³ [Pensions expert, More than a third of schemes ignore own trustee diversity data, 27 September 2022.](#)

²⁴⁴ [European Institute for Gender Equality, Gender Equality Forum 2022: Chair Statement, 20 December 2022.](#)

(c) the policy on diversity with regard to selection of members of the management body, its objectives and any relevant targets set out in that policy, and the extent to which these objectives and targets have been achieved.”

Article 88 (2)(a) of CRD introduces a notion of a target for the underrepresented gender in the administrative, management or supervisory bodies for institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities and establishes a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned.

“Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. The target, policy and its implementation shall be made public in accordance with Article 435(2)(c) of CRR”.

The ECB’s guidelines on the fit and proper assessments²⁴⁵ highlight the importance that the fit-and-proper assessments in relation to diversity are interlinked with day-to-day supervision: any identified failure to respect gender quotas is brought to the attention of the supervised entity in ongoing supervision. The ECB also refers in its fit-and-proper decisions to any relevant diversity findings in the governance assessments.

NCA should use the reported information to supervise the compliance of IORPs with the new requirements proposed in section 7.5. Moreover, NCAs can play a role in driving D&I on the management board within their regulated entities, gathering quantitative and qualitative data that might be used for different purposes, such as publishing aggregated data on the levels of D&I in the sector and tracking trends to know to what extent the sector is reaching its D&I goals. With this data, NCAs can monitor how IORPs incorporate D&I requirements in the system of governance and enhance transparency on D&I in the pension sector. Gathering D&I data will also be crucial to support regulatory changes in the upcoming future.

EIOPA considers that it is straightforward to measure diversity as it can be measured by head counting. However, quantifying feelings of inclusion is more difficult to measure. Nonetheless, there already exists metrics for measuring D&I²⁴⁶. The narrative, along with the numbers, is what really draws the complete picture of D&I.

Having raised the benefits of collecting and analysing D&I data and considering that the majority of NCAs do not collect any information on D&I, EIOPA believes that IORPs should report, taking into

²⁴⁵ [ECB, Guide to fit and proper assessments, December 2021.](#)

²⁴⁶ See example: [Felicity Menzie: Meaningful Metrics For Diversity and Inclusion, 2018.](#)

account the proportionality principle, D&I-related information. Information that should be updated at least annually is the following:

- a) The policy promoting D&I regarding the selection of members of the management body and its objectives;
- b) Publicly disclosing the target for the representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender in the management, and its implementation in the annual reports.

An IORP will not be penalised for failing to meet the target for the representation of the underrepresented gender. EIOPA believes that an IORP should explain in its annual report the reasons for its failure to meet the target, how it attempted to meet the requirements, and how it plans to be successful in the future.

Policy options

Option 0: No change

Option 1: To require IORPs, having regard to proportionality, report D&I information.

That reporting should consist of the following:

- ▶ Reporting to NCAs the policy promoting D&I regarding the selection of members of the management body and its objectives;
- ▶ Publicly disclosing the target for the representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender in the management, and its implementation in the annual reports.

Impact of the policy options

Option 1: To require IORPs, having regard the proportionality, report D&I information.		
Costs	Members	/
	IORPs	This information will increase IORPs' reporting requirements.
	NCAs	It may be difficult to report policy information in a standardized way that allows comparison between IORPs.
	Other	/
Benefits	Members	/
	IORPs	Reporting this information will enhance transparency.

	NCAs	<p>If NCAs receive information on the number of members of the management body, NCAs will be able to monitor whether IORPs respect D&I in management bodies and achieve the target for underrepresented gender in management bodies, taking proportionality into account.</p> <p>NCAs can perform D&I analysis and publish reports for their stakeholders.</p> <p>This data might be used for different purposes, such as to monitor how IORPs incorporate D&I requirements in the system of governance and to support regulatory changes in this field.</p> <p>NCAs can collect data on the diversity of management bodies to deepen the understanding of the issues and enable them to track how the management bodies’ composition changes over time.</p>
	Other	/

Comparison of policy options

EIOPA advocates the option consisting of requiring D&I information to be provided to NCAs on a regular basis to monitor D&I in management bodies and the target for underrepresented gender in management bodies (Option 1).

The survey conducted by EIOPA indicated that most NCAs do not require any information on diversity and inclusion issues. Therefore, it is considered relevant to include this information to be reported to NCAs.

7.6.3. ADVICE

EIOPA advises to amend Article 21 of the IORP II Directive to include *“Member States shall require IORPs to regularly report to the competent authorities the policy promoting diversity and inclusion on the management or supervisory body and its objectives”* (option 1).

EIOPA advises to amend Article 21 of the IORP II Directive to include: *“Member States shall require IORPs to publicly disclose the target for the representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender in the management or supervisory body and its implementation in the annual reports”* (option 1).

ANNEXES

ANNEX 1: OVERVIEW OF THE IORP MARKET

The annex is compiled based on the quantitative information gathered through the EIOPA Decision of the Board of Supervisors concerning regular information requests made to NCAs²⁴⁷ or, in cases where no submissions were received as per the aforementioned Board of Supervisors Decision, through a survey. Please note that the data from EL is not included in this annex.

It is important to recognize that the findings in this report are primarily based on pension data as of 31 December 2021. However, it should be noted that IORPs may not necessarily have their financial year end on 31 December. Consequently, certain figures may pertain to different reporting periods, and thus may not accurately represent the actual totals as of 31 December 2021.

It is worth mentioning that due to variations in objectives, scopes, coverage, and reporting periods or timings of the data received by EIOPA, the information provided in this annex may differ from other national publications.

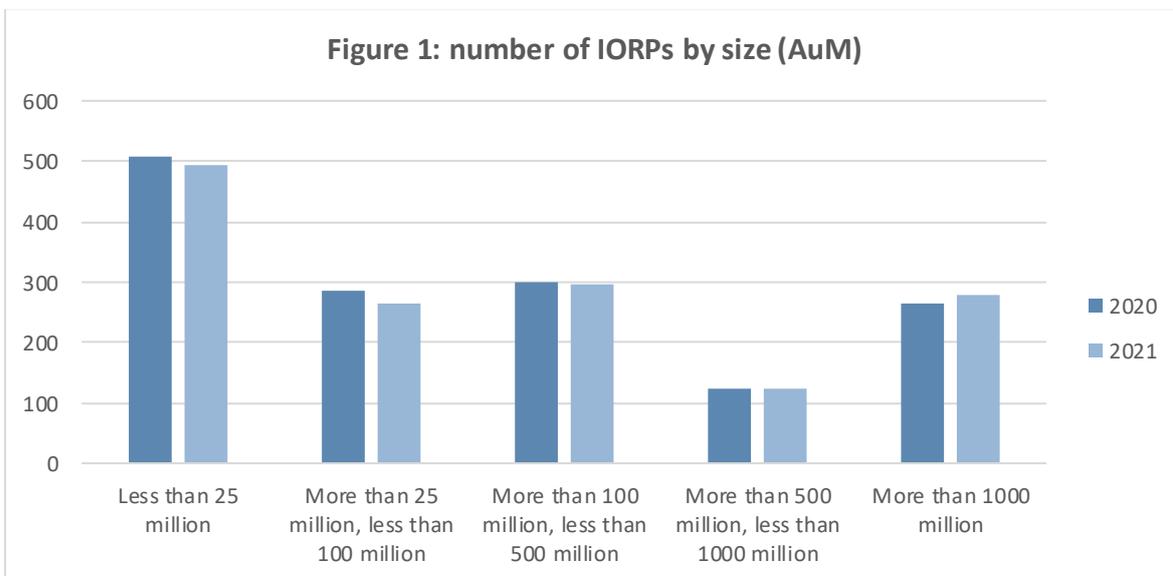
Furthermore, the information presented in the graphs is aggregated by country and is only included if it comprises data from at least three reporting entities. In cases where this criterion is not met, the data is included in the 'other countries' categories. Alternatively, if the data refers to less than three reporting entities of a particular type in the country, it may be indicated that 'no split is possible'.

SECTION 1: TYPES OF IORPS

Pension funds operating under the IORP Directive are present in nearly all EEA countries. The only exceptions are CZ, EE, IS, LT, and RO where IORPs are not established. Overall, there are 88,848 IORPs in existence. However, the number of IORPs is declining annually due to consolidations. This trend is clearly illustrated in Figure 1, which demonstrates a decrease in the number of IORPs with assets under management (AuM) below EUR 500 million, accompanied by a corresponding rise in the number of larger IORPs²⁴⁸.

²⁴⁷ This data as well as additional detail can be found here: [Occupational pensions statistics | Eiopa \(europa.eu\)](https://www.eiopa.europa.eu/occupational-pensions-statistics)

²⁴⁸ Not including data from IE and CY. However, similar observations can be noted there.



The majority of IORPs are concentrated in IE, primarily due to the presence of numerous smaller IORPs. In addition to IE, a significant number of IORPs are situated in CY, ES, IT, and NL (See Figure 2)²⁴⁹. On the other hand, the largest IORPs, in terms of size, can be found in NL, DE, and IT.

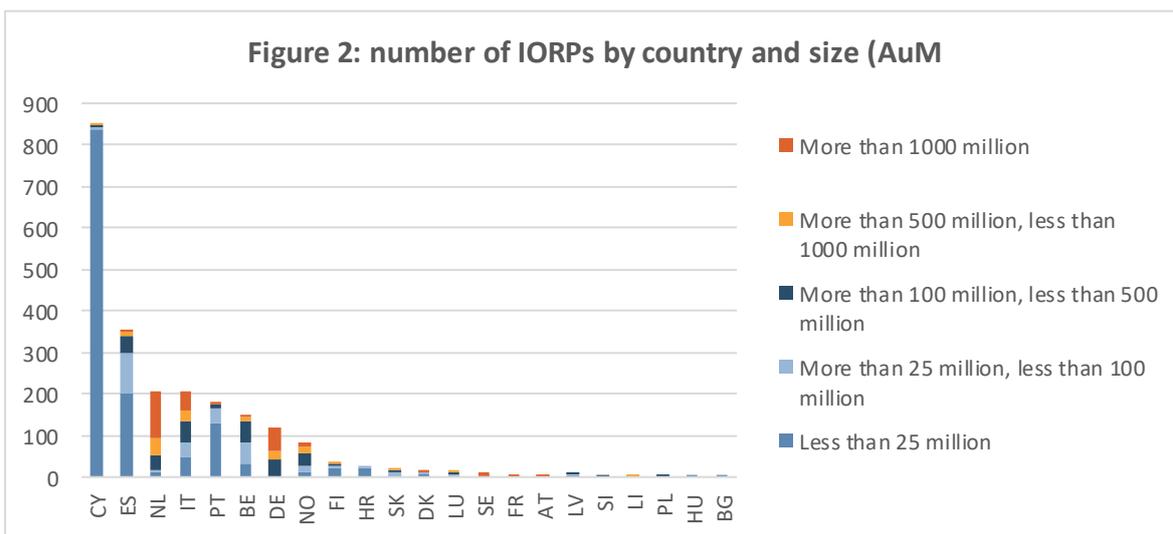
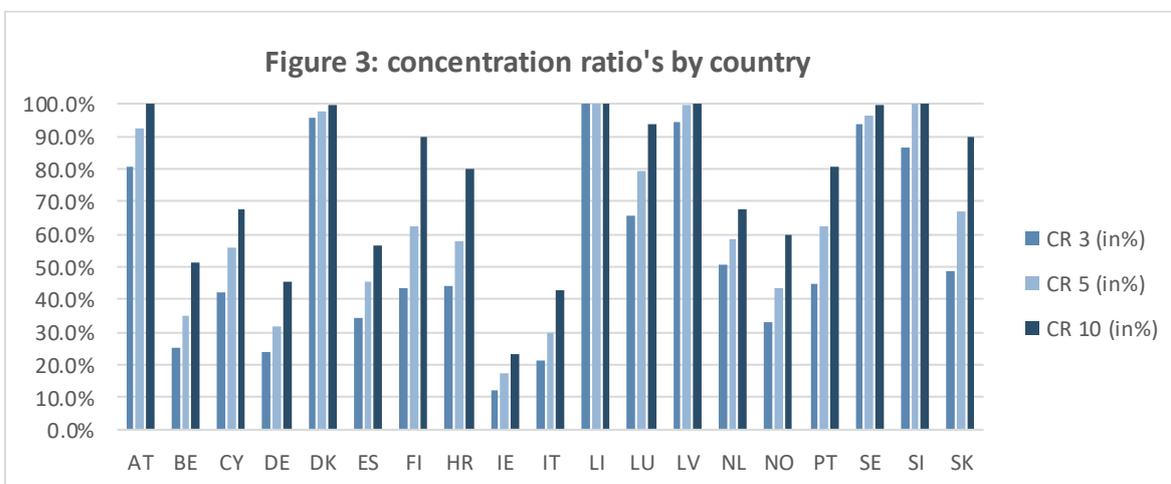


Figure 3 below presents a comprehensive overview of concentration ratios by country. These ratios illustrate the proportion of assets held by the three, five, and ten largest IORPs in relation to the total assets under management (AuM) within each Member State. The data reveals that in DE, IE,

²⁴⁹ IE is not included in the graph. However, the figures for IE are 14 large IORPs of more than EUR 1 billion as compared to almost 90,000 very small IORPs (excluding the 70,000 DC IORPs without active members).

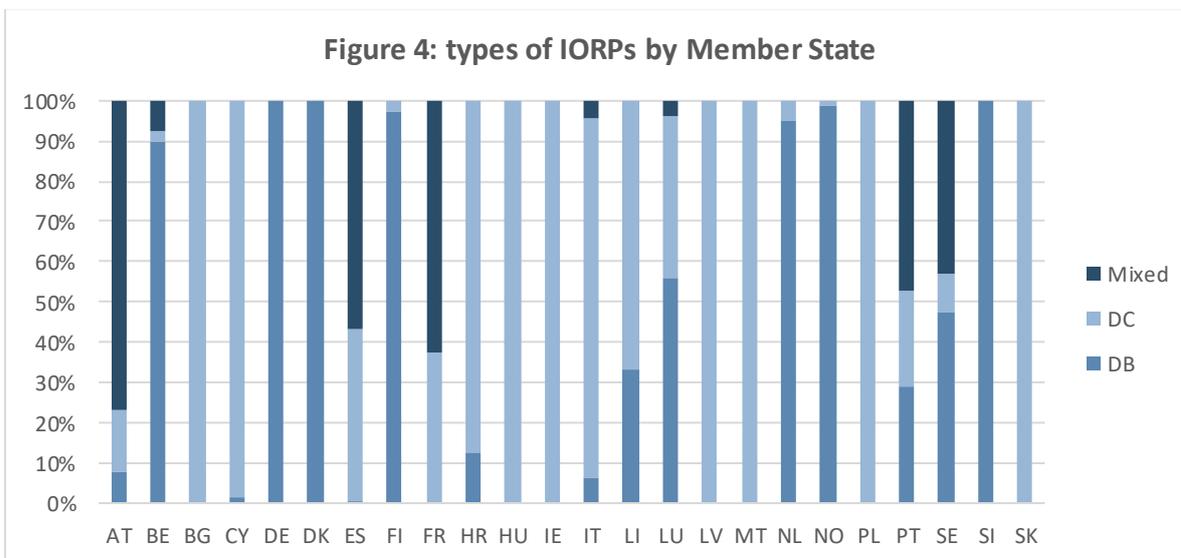
and IT, the ten largest IORPs do not collectively account for half of the market's AuM. Conversely, in half of the Member States, the combined assets of the three largest IORPs represent half of the total AuM. This demonstrates the varying degrees of concentration within the pension fund market across different countries.



In general, IORPs can offer either DB or DC schemes. IORPs that offer both DB and DC schemes are categorized as mixed IORPs according to the EIOPA taxonomy. Within the EEA, approximately 99% of IORPs exclusively provide DC schemes. However, when excluding IORPs in CY and IE²⁵⁰, approximately half of the remaining IORPs offer solely DB schemes, while 30% offer exclusively DC schemes, and 20% provide both DB and DC schemes.

However, as shown in Figure 4 below, it is evident that in less than half of the Member States, there are a greater number of IORPs offering DB schemes compared to those offering DC schemes or a combination of both.

²⁵⁰ Which both have many very small DC IORPs, skewing the figures.



By the end of 2021, a slight majority of IORPs were catering to a single sponsor. However, there was a notable three percent increase over the past year in the number of IORPs providing services to multiple sponsors, reaching a total of 718 IORPs. Furthermore, multi-sponsor IORPs constitute the majority in most Member States.

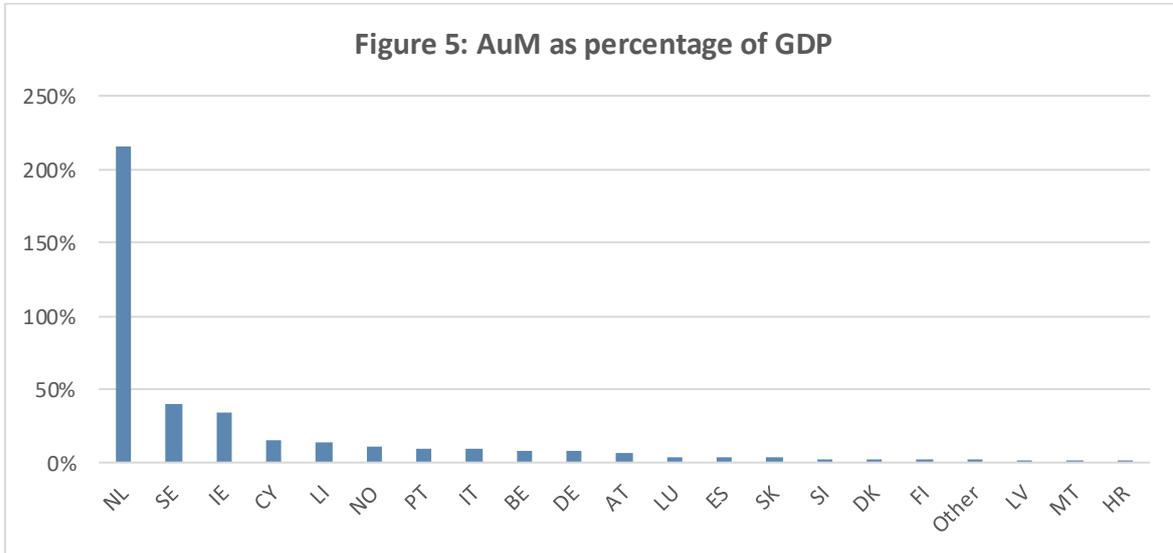
Article 4 of the IORP II Directive allows home Member States to apply specific provisions of the IORP Directive to the occupational retirement provision business of life insurance undertakings during a transitional period that concluded on December 31, 2022. EIOPA highlights that as of the end of 2021, no insurance undertakings were utilizing this option anymore. Previously, this provision had been applied in FR, LT, SI, and SE.

Next to the provisions in Article 4 of the IORP II Directive, the Directive also includes a provision in its Article 15(1) that the home Member State shall ensure that IORPs operating pension schemes, where the IORP itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, hold on a permanent basis additional assets above the technical provisions to serve as a buffer. Such IORPs, can be found in almost all EEA countries with the exception of BE, BG, CY, ES, HU, FI, LV, MT, PL.

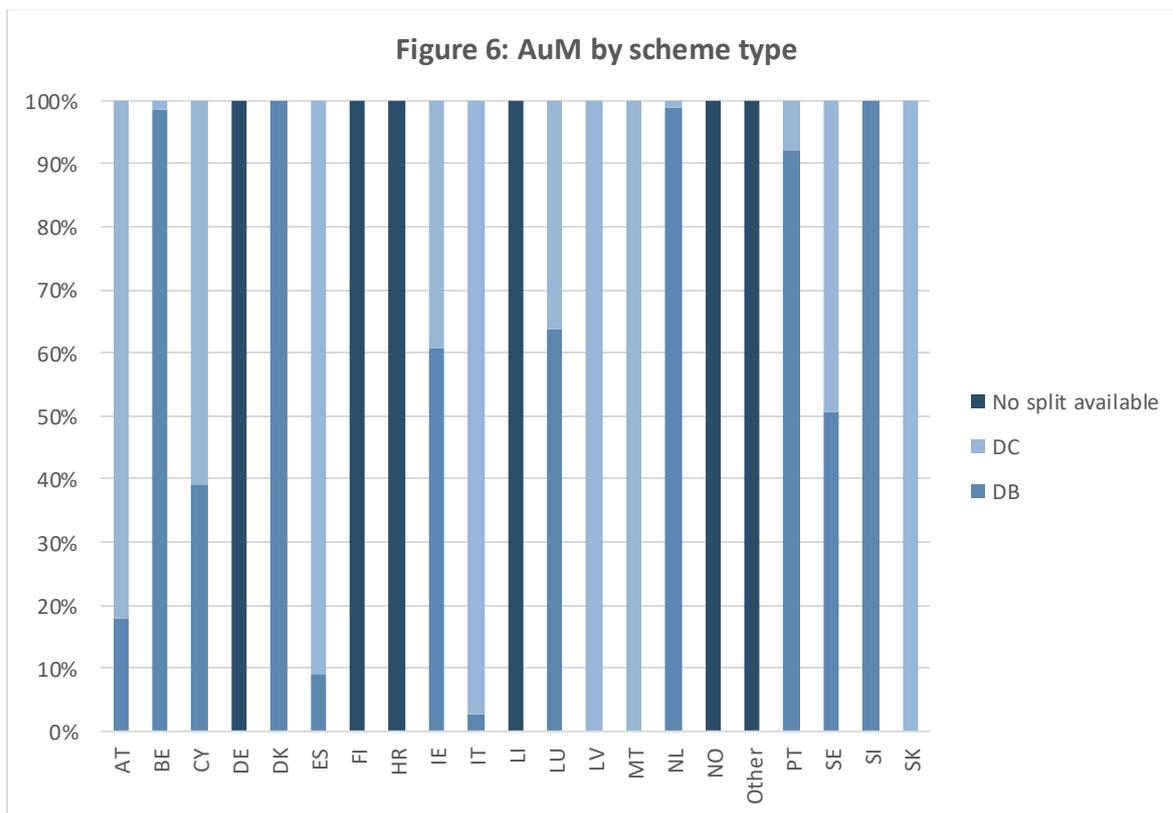
SECTION 2: ASSETS AND ASSET EXPOSURES

By the end of 2021, the AuM of IORPs totalled EUR 2,920 billion, marking an impressive eight percent increase compared to the figures reported at the end of 2020. Notably, the NL accounted for a significant portion, representing 63% of the total AuM within the EEA. Additionally, the combined contributions of the four largest Member States (NL, DE, IT, and SE) accounted for over 86% of the total AuM.

Furthermore, also when considering the AuM as a percentage of GDP, NL notably possesses the largest IORP sector by a significant margin. Figure 5 further illustrates the economic significance of the IORP sector across Europe.



Approximately 82% of the assets can be attributed to DB schemes. However, as shown in figure 6 this proportion varies significantly across Member States.



IORPs across Europe invest primarily and almost half of their assets in investment funds²⁵¹. Among these investment funds, a significant portion, approximately 43%, is directed towards those primarily focused on equity investments. In contrast, funds that specialize in debt investments account for 24% of the allocations, while real estate funds represent 11%, and alternative investments account for 8%.

IORPs allocate 30% of their investments to bonds, with a notable distinction between government bonds and corporate bonds. Specifically, investments in government bonds account for twice as much as investments in corporate bonds. The majority of government bond investments predominantly consist of holdings in central government bonds.

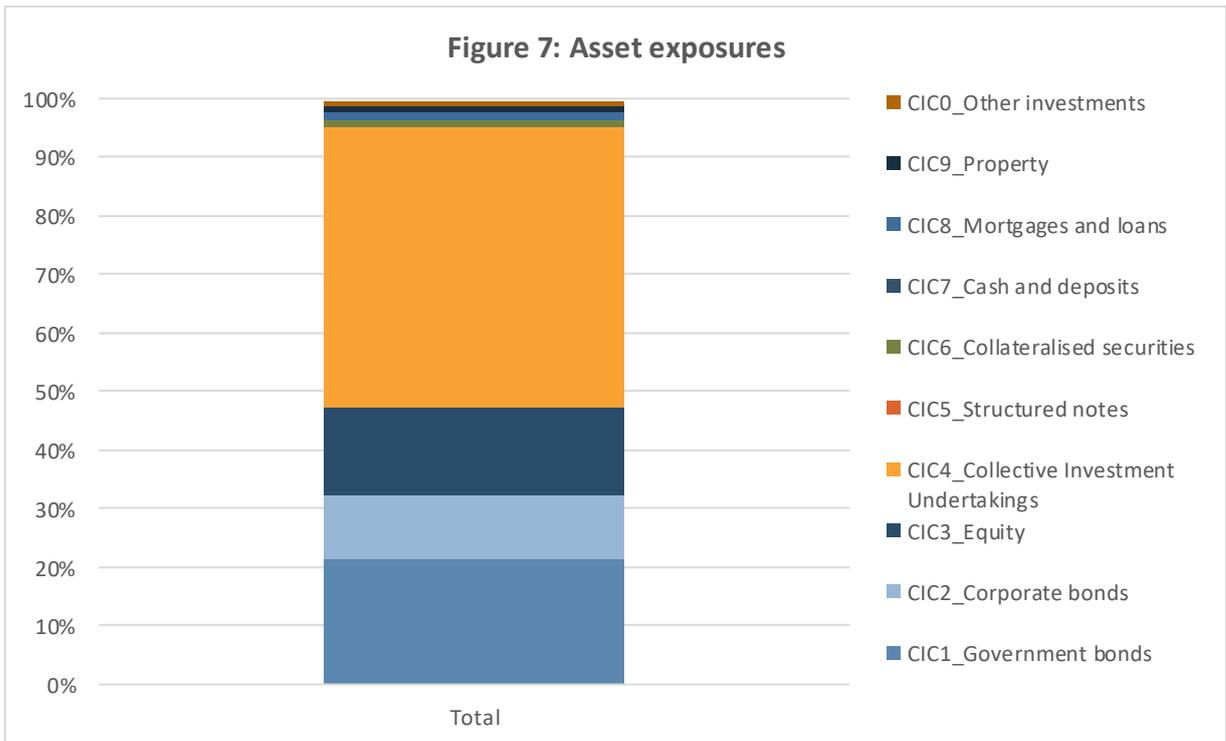
The third largest category of investments for IORPs is direct investments in equities (see Figure 7). These investments predominantly consist of holdings in listed equity securities.

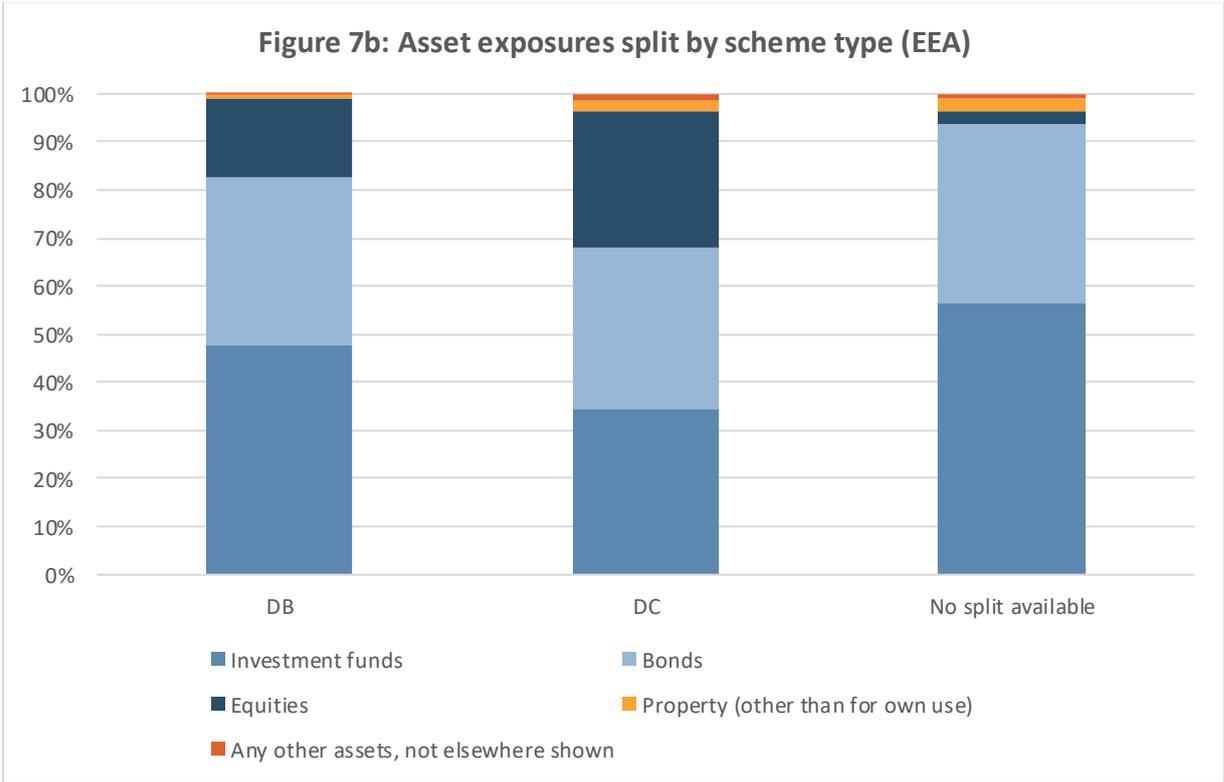
Figure 7b highlights an interesting trend: IORPs that provide DB schemes tend to allocate a significantly larger portion of their assets to investment funds compared to IORPs providing DC

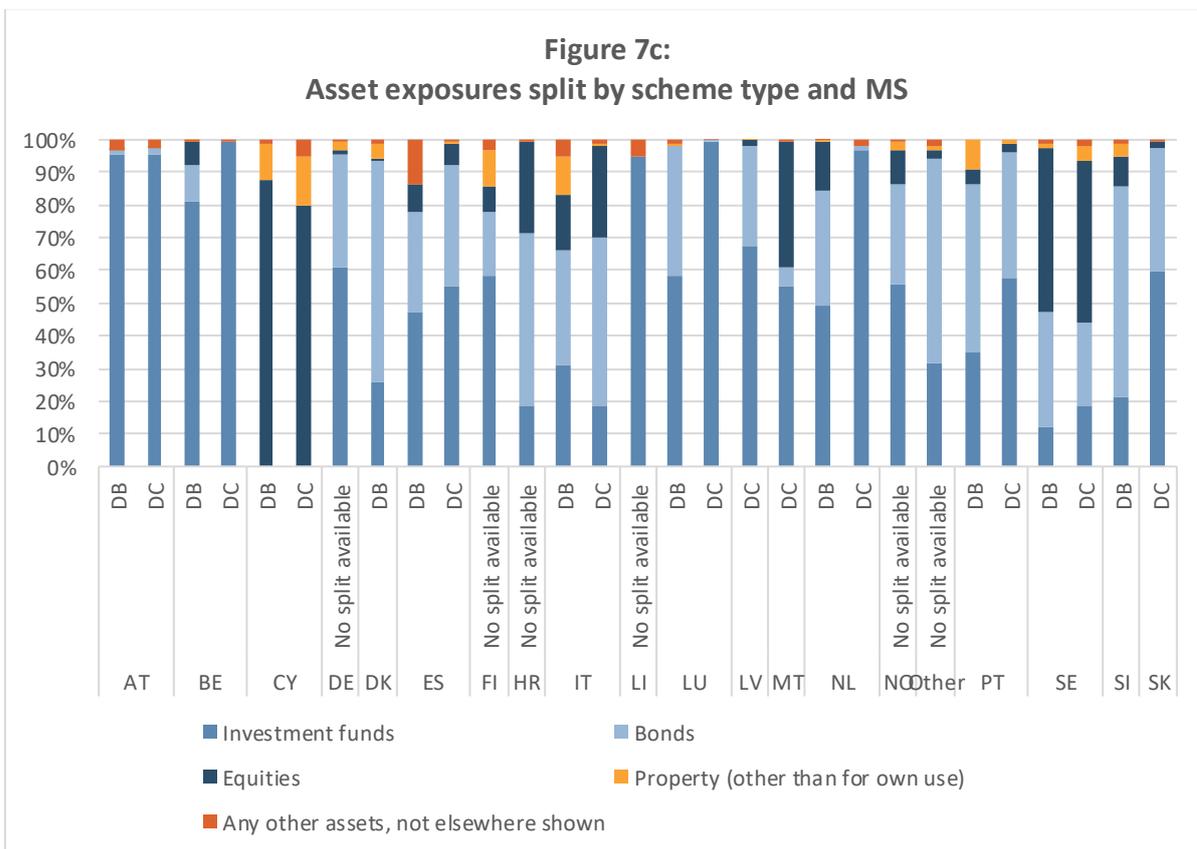
²⁵¹ Data on investments does not include data from IE.

schemes. On the other hand, IORPs offering DC schemes appear to prefer more direct investments in equities.

However, Figure 7c shows it is important to consider that the figures mentioned above in regard to investment allocations are influenced by the dominant markets for both DB schemes (such as NL) and DC schemes (IT). This observation emphasizes that national circumstances and regulations play a crucial role in shaping the investment strategies of IORPs. These factors have a significant impact on the investment landscape, potentially surpassing the influence of scheme types alone.







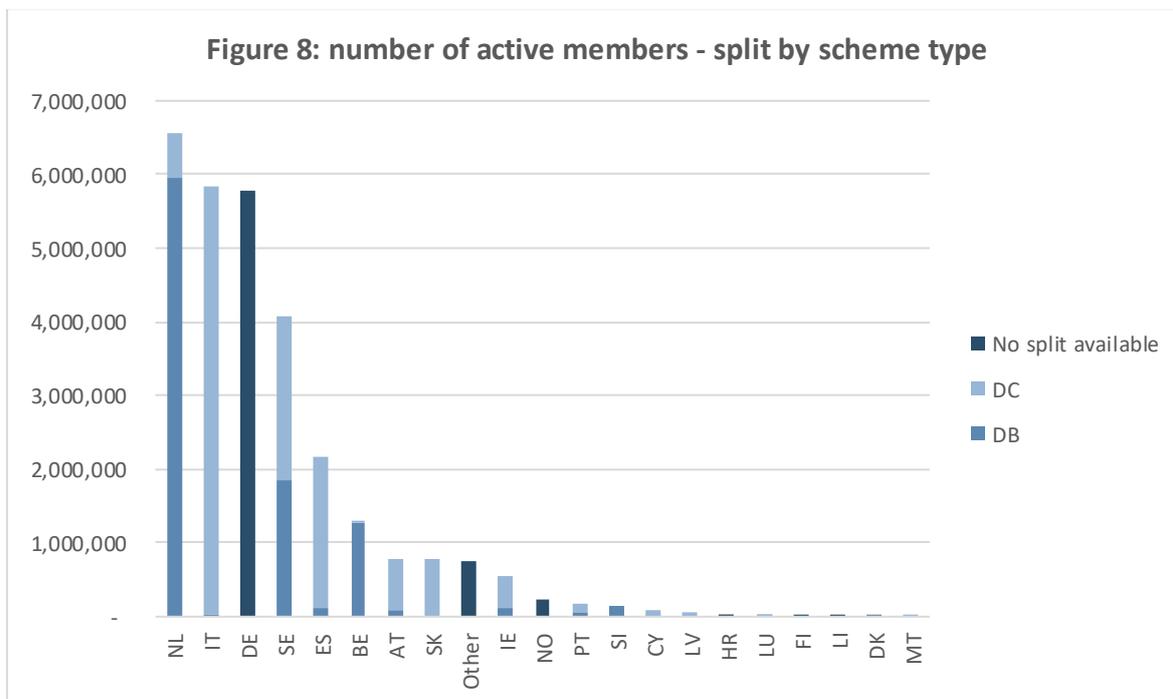
SECTION 3: MEMBERS AND BENEFICIARIES

By the end of 2021, the total number of members and beneficiaries in IORPs reached 58 million. Among them, nearly 29 million were active members, showcasing a notable ten percent increase compared to the previous year.

The majority of active members belong to DC schemes²⁵². However, when considering deferred members and beneficiaries, the composition differs. Yet, the number of active members offers a more accurate reflection of current trends as it focuses solely on the present situation, disregarding legacy schemes and past savings.

Figure 8, presented below, demonstrates significant variations in the number of active members across Member States. It is worth mentioning that within the EIOPA taxonomy, some schemes may be classified as DB schemes, although they may be categorized as DC schemes in the national context (e.g. DC schemes with a guaranteed investment return).

²⁵² Excluding those Member States where the split is unknown.



The Dutch pension system is currently undergoing a transition towards a predominantly DC structure. Once this transition is completed, it will have a significant impact on the European IORP sector, making it predominantly DC-oriented. Projections indicate that after the transition, approximately 64% of active members are expected to participate in a DC scheme accounting for 79% of the AuM, reflecting a substantial shift.

SECTION 4: CONTRIBUTIONS RECEIVED, AND BENEFITS PAID²⁵³

In 2021, IORPs received a total of EUR 83 billion in contributions. Of these contributions, approximately one third was contributed by members, while two thirds were paid by sponsors. Simultaneously, EUR 65 billion was disbursed in benefit payments, with 75% allocated to retirement payments and the remaining amount utilized for other benefits, such as in death or disability payments.

When considering contributions and benefits by scheme type, DB schemes accounted for approximately 55% of the total contributions collected and 63% of the benefits paid out. Conversely, DC schemes constituted 27% of the total contributions received and 20% of the total benefits disbursed. It is important to note that this distribution does not imply that DC schemes pay out lesser amounts after a certain level of contributions have been collected. The variation arises due to the time difference between the collection of contributions and the payment of benefits, coupled

²⁵³ This section does not include data from IE.

with the fact that DC schemes are on the rise and less mature compared to DB schemes. Consequently, although more contributions are being collected in DC schemes, the benefits are yet to be paid out as their (new) members have not yet reached retirement age.

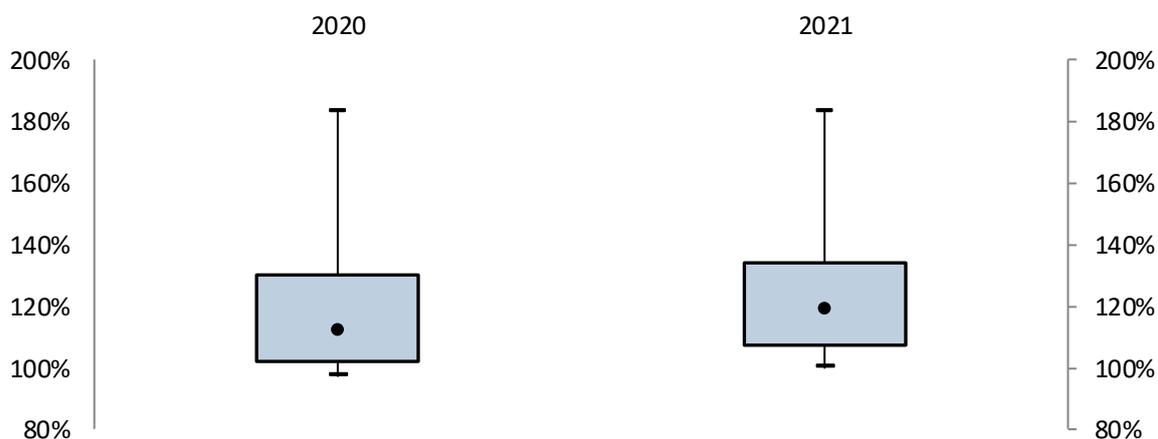
SECTION 5: FUNDING POSITION

At the end of 2021, all EEA countries exhibited a positive funding ratio at an aggregated level, calculated as the total assets of DB schemes over their total liabilities²⁵⁴. The average weighted funding level stood at 116%, which closely aligns with the unweighted funding level of 118%.

Analysing the funding ratio's by IORP reveals a similar outcome, with an average weighted ratio of 117%. This signifies a notable increase of more than 12 percentage points compared to the funding ratio at the end of 2020. Moreover, at the end of 2021, only 22 out of the 516 IORPs were underfunded, indicating a significant improvement from the previous year when 65 out of 518 IORPs were in an underfunded position.

The accompanying boxplot provides a comparison of individual IORP data for both years. It confirms the overall upward trend in funding ratios throughout 2021 for IORPs with medium or low funding ratios. Notably, it reveals that for the highest percentiles, there was no change in funding ratios between 2020 and 2021.

Figure 9: boxplot funding ratio in %; median, interquartile range and 10th and 90th percentile

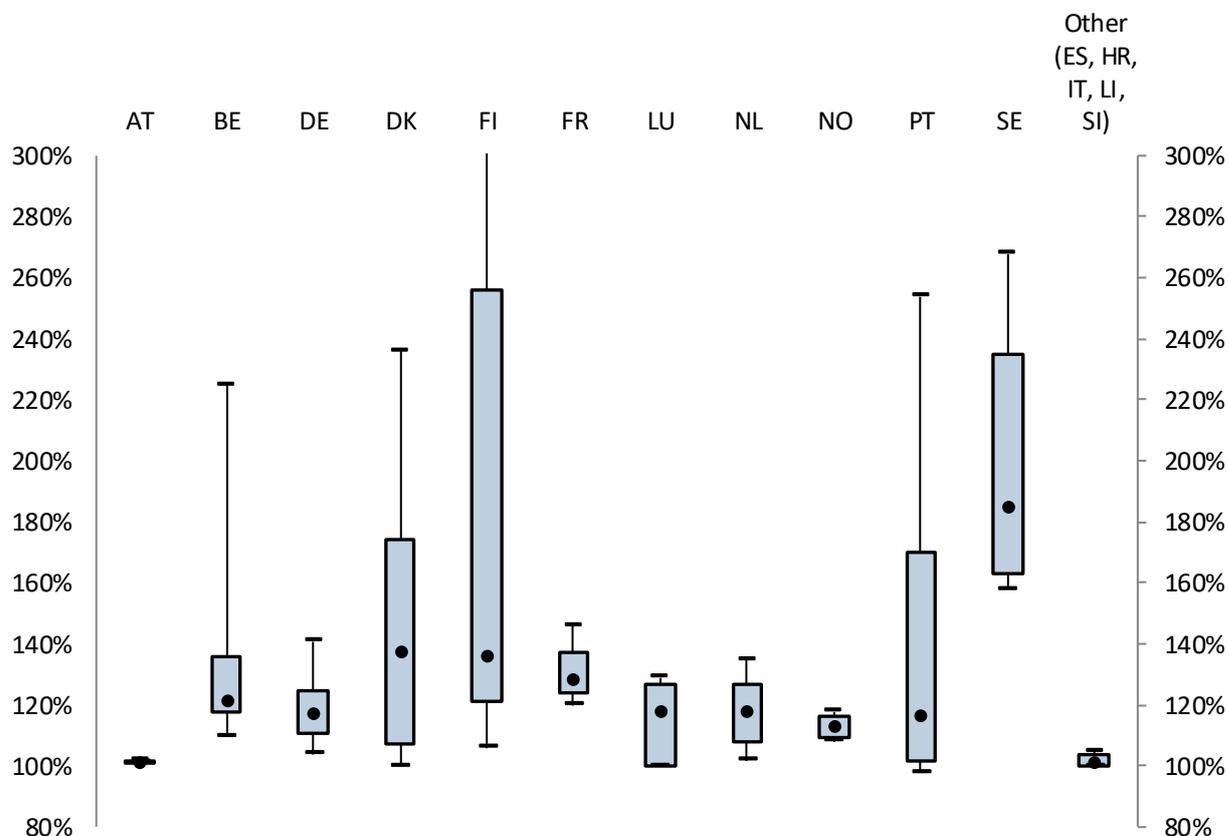


However, as shown in figure 10, significant variations exist in the reported funding ratios across the EEA. These disparities can be attributed to the utilization of different valuation methods for calculating liabilities. It is important to note that the figure should not be employed to directly

²⁵⁴ Information on the liabilities in CY was not yet available at the time of writing.

compare funding ratios between different countries. Furthermore, differences in valuation standards within a country may have also influenced the variations observed in funding ratios.

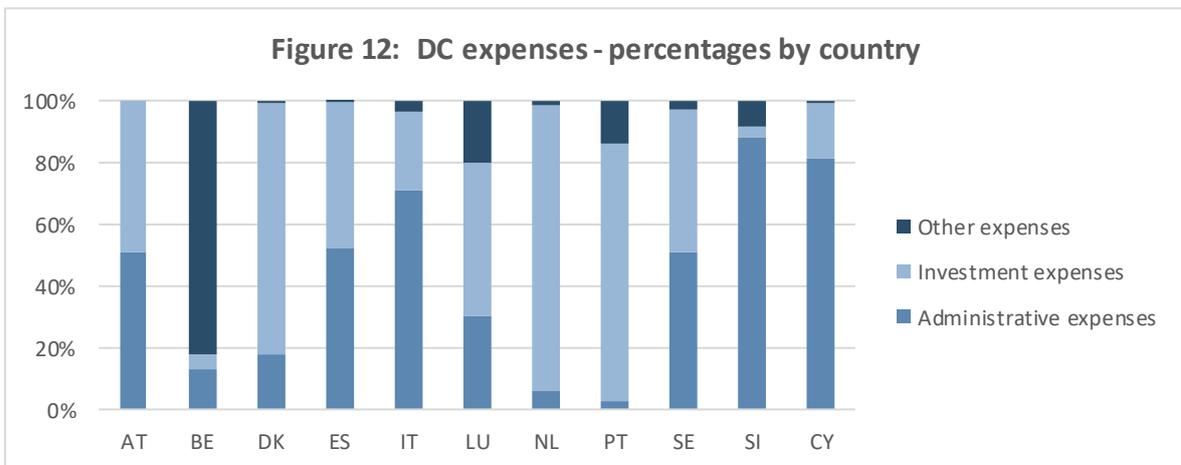
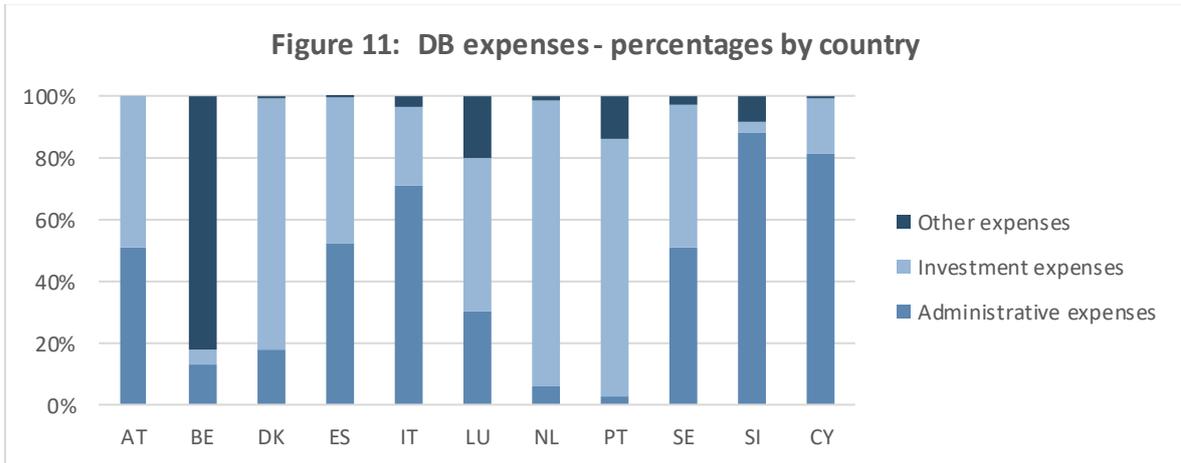
Figure 10: boxplot funding ratio in %; median, interquartile range and 10th and 90th percentile



SECTION 6: EXPENSES

In 2021, IORPs disclosed expenses exceeding EUR 20 billion, marking a notable 33% increase compared to the previous year. Within the EEA, the majority of these expenses are associated with investment-related costs.

However, when examining the breakdown, investment expenses constitute 86% of the total expenses for DB schemes, while they comprise only 50% of the total for DC schemes in 2021. Figures 11 and 12 below illustrate the country-specific nature of reported expenses and the substantial variations that can arise between DB and DC schemes, even within the same countries.



ANNEX 2: APPLICATION OF SMALL IORP EXEMPTION AND FUNDING STANDARDS

TABLE 2.1: MEMBER STATES MAKING USE OF THE SMALL IORP EXEMPTION

<p>In CY, IORPs that have less than fifteen members and assets less than EUR 500 thousand are exempted from the obligation to submit a written statement of investment-policy principles (SIPP). Moreover, IORPs with less than 100 members are exempted from the obligation to make publicly available the annual accounts and the SIPP provided that a copy of each is given to every member and beneficiary of the IORP. Finally, CY applies transitional periods of up to three years to IORPs with less than 100 members (for most cases) in order to give time to small IORPs to understand the new Law regime and make the appropriate decisions, e.g. to merge with other IORPs, or to transfer to another IORP/insurance company operating a pension scheme, or to re-organize the IORP internally taking into consideration the additional Law requirements.¹</p>
<p>In DK, small IORPs do not have to apply Article 24 (key functions), Article 28 (ORA) and Article 30 (SIPP). Moreover, a simplification is applied with regard to Article 17(2)(b) (1% of technical provisions), if the capital risk at the time of application to the Danish FSA are less than one percent of the technical provisions, and if the IORP is in run-off.</p>
<p>In FI, all the new articles introduced in the IORP II Directive (except Articles 19, 21, 32-35) do not apply to small IORPs.</p>
<p>In GR, the IORP II provisions on investment management (Article 32) and depositaries (Articles 33-35) are applied to IORPs with less than 100 members in total. These provisions apply to IORPs which are established and operate outside the scope of the existing legal framework which requires the number of 100 members for the establishment of an IORP (i.e. no such IORPs exist due to that restriction and Article 5 of IORP II is not applicable).</p>
<p>In MT, schemes consisting of five or fewer members are not considered to be an Occupational Retirement Scheme or an IORP and, hence, the IORP II provisions would not apply.</p>
<p>In SE, the small IORP exemption is applied to the so-called pension foundations (pensionsstiftelse), which do not bear biometrical risk. Pension foundations with less than 16 members have less regulation than foundations with 16-99 members, and both have less regulation than pension foundations with at least 100 members.</p> <ul style="list-style-type: none"> ▶ 1-15 members: Article 31 (permitting outsourcing) and some provisions about the depositary apply, but most other provisions are not deemed relevant or applicable.

- ▶ 16-99 members: Similar to 1-15 members, but some rules on the depositary (based on Articles 32-35) apply as well as on investment and governance (based on Articles 19(1), 21(1) and (2)) apply. Most other provisions are not deemed relevant or applicable.

In **IT**, IORPs with less than 100 members do not have to apply the COVIP regulation "Provisions on the investment policy implementation process" in relation to the SIPP (Article 30).

In **LV**, the establishment of the pension scheme committee is not mandatory, if less than 100 employees participate in the pension scheme.

¹ Some of the basic exemptions with transitional periods allow until 10 February 2023:

- the members of the management committee of small IORPs not to possess collectively the appropriate qualifications and experience, provided that they are assisted by qualified and experienced consultants,
- small IORPs to draw up their written policies on risk management, internal audit, actuarial, remuneration and outsourcing (where applicable) on a later date set in the Law,
- small IORPs to carry out the risk management and audit function and submit ORA and SIPP on a later date set in the Law,
- small IORPs not to take into account the ESG factors in their investment policy (SIPP) and not to incorporate in their PBS the information on whether and how ESG factors are considered in the investment approach,
- small IORPs to prepare a PBS on a later date set by the NCA etc.

TABLE 2.2: NATIONAL APPROACHES TO FUNDING REQUIREMENTS AND RECOVERY PLANS

	Funding requirement/ trigger point	Asset valuation	Technical provisions: discount rate	Recovery plan possible?	Length of recovery plan	Allowance expected return in recovery plan
AT	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Not specified	Expected returns on assets and/or yield on government or high-quality bonds	Yes	3 years	Yes
BE	100% TP + regulatory own funds in line with Article 15(1) and calculated in accordance with Article 15(2) IORP II Directive, if the IORP underwrites the liabilities or guarantees an investment return (i.e. obligation of means). Special solvency margins also apply under Article 15(3) for IORPs without sponsors and for IORPs when they provide cover for biometric risks to	Market value	Mostly expected return: long- term expected return/fixed discount rate or market yields plus risk premium with a margin for prudence, which can also be added to technical provisions.	Yes	Maximum of 5 years, but can be shortened/ext ended by NCA under specific circumstances	No

	protect against catastrophic events.					
	100% short-term TP (≈ 80% long-term TP)	"	"	Yes	Maximum of 1 year	"
BG	Not relevant ¹	Not relevant	Not relevant	Not relevant	Not relevant	Not relevant
CY	100% TP	Market value	Expected return: market yield plus risk premium.	Yes	To be agreed by IORP and sponsor and subject to NCA approval.	Yes, to be decided by the appointed actuary in consultation with investment adviser.
CZ	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Not specified	Expected returns on assets and/or yield on government or high-quality bonds	Yes	Reasonable timeframe	Not relevant / specified
DE - Pensionsfonds	100% TP + regulatory own funds in line with Article 15(3) IORP II Directive	Market value	Expected return.	Yes, if assets cover at least 90% or 95% of	Maximum of 10 years in case the lower limit of 90% applies,	Yes, subject to NCA approval and recovery plan should always include

				technical provisions.	maximum of 3 years in case the lower limit of 95% applies.	additional sponsor payments.
	90% or 95% TP depending on the type of product the Pensionsfonds uses	"	"	No, immediate injection of assets to cover at least the limit of 90% or 95% of technical provisions.	Not relevant	Not relevant
DE - Pensionskasse	100% TP + regulatory own funds in line with Article 15(3) and calculated in accordance with Article 15(1) IORP II Directive	Book values based on acquisition costs	Contractually agreed interest rate, often adjusted to reflect low interest rate environment. In some cases, there is a maximum interest rate which is currently set 0.25% for new contracts.	No	Not relevant	Not relevant
DE – reine Beitragszusage (pure DC scheme which can be operated by Pensionskassen)	Regulatory own funds in line with Article 15(3) IORP II Directive. Technical provisions equal value of assets.	Market value	Technical provisions equal value of assets	No	Not relevant	Not relevant

as well as Pensionsfonds)						
DK	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive.	Market value	Solvency II risk-free term structure, incl. volatility adjustment	Yes	No legal maximum, but typically 3-6 months.	Not relevant/ specified
ES	100% TP + Solvency margin 2% + 0.3%, unless the IORP is completely insured.	Market value	Maximum discount rate is equal to government bond yield. Higher expected return possible, if used and complied with maximum discount rate in the past.	Yes	Maximum of 5 years, but can be extended by the NCA to maximum of 10 years.	Not relevant/ specified
FI	100% TP	Market value	Fixed discount rate with a maximum of 3.2% in 2022, 3.1% in 2023 and 3.0% in 2024 and thereafter	Yes, but underfunding and, hence, a recovery plan is only possible, if the calculation rules for the pension liability have been changed due to changes in legislation, demography or	Maximum of 10 years.	Yes, indirectly in determining contribution levels.

				economic conditions.		
FR	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Book value based on the acquisition cost	Maximum discount rates capped according to the contractual interest rates	Yes	3 years	Not relevant
GR	100% TP + solvency margin in accordance with Article 16 and Article 17. IORP II Directive.	Market value	Expected return. In cases of guarantees, maximum discount rate is equal to 25 years average of interest rate of zero-coupon government bonds of the Eurozone countries.	Yes	Maximum of 3 years	Not relevant/ specified
HR	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Fair value or amortised cost according to IFRS	Maximum interest rates (per 31 December 2022), ranging from 1% (contracts concluded after 1 January 2018 with a duration exceeding 5 years) to 3% (contracts concluded before 1 January 2015)	Yes	Not specified, but IORPs in deficit may not conclude new contracts	Yes

IE	100% TP + risk-based reserve requirement	Market value	Market rates for pensions in payment, combination of fixed discount rates (7% blended with 4.5% with some adjustment for long-term bond yields) depending on the term to retirement for other obligations.	Yes	Maximum of 3 years, longer recovery period subject to NCA approval. Typical length 10 years.	Yes, with a maximum of 6% or 4.5% if the recovery plan includes benefit reductions.
IT	100% TP + regulatory own funds in accordance with Article 15, depending on the availability of sponsor support.	Market value (in few cases acquisition cost)	Expected return with maximum of 5%.	Yes, unless the IORP is covered by legally enforceable sponsor support and the sponsor is subject to supervision.	Maximum of 10 years, but can be extended by the NCA in specific situations.	Yes, with a maximum of 5%.
LI	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Market value	Expected returns on assets or yield on government or high-quality bonds.	Yes	Reasonable timeframe taking into account the specific situation.	Yes, provided the IORP can demonstrate to the NCA that the assumptions are prudent.
LU	100% TP (PBO)	Market value	Maximum discount rate of 5%.	Yes	To be assessed by the NCA, taking into	Yes, subject to assessment by the NCA.

					account the size of the imbalance.	
	100% TP (ABO)	"	"	No, immediate funding required.	Not relevant	Not relevant
LV	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Market value, in accordance with IFRS	Expected returns on assets and/or yield on government or high-quality bonds, where the discount rate should be reduced by the credit risk component of the yield rate of the securities included in the reference portfolio.	Yes	Not specified, but to be specified upon initial submission to the NCA.	Not specified
MT	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Not specified	Expected returns on assets and/or yield on government or high-quality bonds	Yes, subject to approval of the NCA	Maximum of 10 years	Not specified
NL	100% TP + risk-based buffer requirement (≈ 20-25% of technical provisions).	Market value	Risk free term structure with UFR based on moving average forward rate.	Yes, if the so-called policy funding ratio (moving average over the past 12 months) is below	Rolling recovery period with a maximum of 10 years, i.e. each year a new period of maximum 10	Yes, subject to maximum levels set in national regulation.

				the required funding ratio.	years starts if the policy funding ratio is below the required funding ratio.	
	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive.	"	"	No, compliance to be restored within 6 months if the so-called policy funding ratio (moving average over the past 12 months) has been below the minimum funding requirement for 5 consecutive years.	Not relevant	Not relevant
NO	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive.	Market value	Contractual agreed interest rate	Yes	Limited period of time subject to permission of the NCA, unlikely to exceed a	No

					couple of months.	
PL	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Not specified	Expected returns on assets and/or yield on government or high-quality bonds	No	Not relevant	Not relevant
PT	<p>100% TP</p> <p>IORPs subject to sectorial regulation: 100% present value of pensions in payment + 95% present value of liabilities relating to past service.</p> <p>Requirements related to available and required solvency margin are applicable to pension fund management entities.</p> <p>Required solvency margin should be calculated according to the rules foreseen in</p>	Market value	<p>Generally, discount rate based on the AA corporate bond yield of appropriate maturity.</p> <p>Minimum funding requirement, established by ASF Regulation (for 2022): 3.8% for the value of pensions in payment and 4.2% for the value of liabilities related to past service and vested rights.</p>	Yes	<p>To be proposed by the pension fund management entity considering the specific circumstances, subject to sponsor's agreement.</p> <p>NCA should be notified of the recovery plan.</p>	Yes, to be decided by the appointed actuary.

	Article 17(6) of the IORP II Directive, supplemented by national rules regarding a minimum amount.					
RO	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive.	Market value	ECB AAA government yield curve	Yes	Legal requirements are to be established by the NCA	Legal requirements are to be established by the NCA
SE	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive.	Market value	Risk-free term structure with UFR	Yes	To be decided by NCA, depending on circumstances.	Not specified
SI	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive of at least 4% or 1% of technical provisions, but not less than EUR 3.7 million.	Hold-to-maturity or market value, in line with international accounting standard.	Contractual agreed interest rate	Yes	Maximum 6 months, but can be extended by the NCA under specific circumstances	Yes, provided that the NCA considers the recovery plan to be realistic.

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SK ²	100% TP + regulatory own funds in accordance with Article 15(1) IORP II Directive	Not specified	Expected returns on assets and/or yield on government or high-quality bonds	No	Not relevant	Not relevant
<p>¹ IORPs in BG (including when operating cross-border) provide only pure DC schemes which do not provide cover against biometric risks, nor guarantee an investment performance/a given level of benefits, so the requirements regarding the technical provisions, regulatory own funds and the solvency margin are not applicable.</p> <p>² The rules relating to technical provisions are not legally relevant for IORPs in SK because IORPs in SK only provide pure DC schemes without guarantees and thus the rules relating to technical provisions do not apply to them. However, according to national legislation (Article 72 ('Recovery measures') of the Act 650/2004), the NCA may impose recovery measures on IORPs, if they fail to meet an obligation or the capital adequacy requirement.</p>						

ANNEX 3: EIOPA OPINIONS RELATED TO IORP II DIRECTIVE

EIOPA–BoS- 21 -426 - Opinion on the supervisory reporting of costs and charges of IORPs – Under this Opinion cost reporting to CAs obliges IORPs to assess and manage their cost structure in a more comprehensive and transparent way, which has particular impact for DC members who carry the burden of risk.

EIOPA–BoS- 21 -429 - Opinion on the supervision of long-term risk assessment by IORPs providing DC schemes – Opinion focuses on operational risk assessment and long-term risk assessment from the perspective of members and beneficiaries in DC schemes.

EIOPA –BoS- 19 -245 - Opinion on the use of governance and risk assessment documents in the supervision of Institutions for Occupational Retirement Provisions (IORPs) - the Opinion sets out to guide NCAs on the use of governance documents in their supervision of IORPs within the SRP. Particular mentions to DC in some elements on guidance on the use of the SIPP.

EIOPA –BoS- 19 -247 - Opinion on the supervision of the management of operational risks faced by Institutions for Occupational Retirement Provisions (IORPs) - this Opinion works to promote consistent supervisory practices by providing NCAs with guidance on the supervision of IORPs' management of operational risks, including the assessment and management of outsourcing and cyber risks. The Opinion focuses on the immediacy of operational DC risks and notes NCAs should review IORPs' operational ability to collect and invest DC contributions accurately and on time.

ANNEX 4: TYPES OF OCCUPATIONAL PENSION SCHEMES

TYPE OF SCHEME	MAIN CHARACTERISTICS		SPECTRUM OF RISKS
DC OCCUPATIONAL PENSION SCHEMES	Occupational pension schemes under which the scheme sponsor and employees pay fixed contributions and have no legal or constructive obligation to pay further contributions to an ongoing scheme in the event of unfavourable plan experience. DC benefits are defined primarily in terms of the level of the capital built up from the contributions made over the employees' working lives, the increases in value that result from the investment of such contributions by the pension scheme and decreased by expenses. DC schemes manage savings offering to members different investment options, ranging from guaranteed options (protected DC IORPs) to investment options (unprotected DC schemes) with different risk-return and time horizon to meet retirement needs of members.	<p>Unprotected DC pension scheme</p> <p>An occupational DC pension scheme where the pension scheme/fund itself or the pension provider does not offer any investment return or benefit guarantees or promises covering the whole pension scheme/fund.</p> <p>By definition an unprotected DC pension scheme is always fully funded</p>	Investment and biometric risks borne individually by members
		<p>Protected DC pension scheme</p> <p>An occupational DC pension scheme other than an unprotected DC pension scheme. The guarantees or promises may be offered by the pension plan/fund itself or the plan provider</p>	Investment risks shared collectively
		Risks shared collectively	

		(e.g. deferred annuity, guaranteed rate of return).	(accumulation) and possibly partly reinsured.
DB OCCUPATIONAL PENSION SCHEMES	Occupational schemes other than DC schemes. The benefits payable to the employee on retirement are determined by the use of a formula, either alone or in combination with a guaranteed minimum amount payable. Pension obligations of DB schemes are valued using actuarial methods, addressing both investment as well as biometric risks. Generally, the factors considered to value the defined benefits are the years of service, the salary over a defined period of time, the age at retirement and the indexation rule. DB schemes estimate the surplus/deficit relative to the funding requirements at the reference date.	<p>Hybrid DB scheme</p> <p>A DB scheme where benefits depend on a rate of return credited to contributions, where this rate of return is either specified in the scheme rules, independently of the actual return on any supporting assets (e.g. fixed, indexed to a market benchmark, tied to salary or profit growth, etc.), or is calculated with reference to the actual return of any supporting assets and a minimum return guarantee specified in the scheme rules.</p>	Investment and biometric risks shared between the plan, providers, sponsors and members, beneficiaries (pay-out), and possibly partly re-insured
		Traditional DB scheme A DB scheme where benefits are calculated through a formula to the members' wages or salaries, length of employment, or other factors	Risks fully borne by the sponsor provider Source: Based on EIOPA, OECD, and ESA classifications

ANNEX 5: RELEVANT LEGAL PROVISIONS OF IORP II DIRECTIVE

Article 19 – Investment rules - due to the risk burden in DC schemes being on the member and not the sponsor as in DB, there needs to be particular attention to correct and prudent investment of contributions – no division between types of scheme currently exists.

Articles 28 – 30 – Documents concerning governance — reflecting DC specific risks in ORA’s, annual reports and in the SIPP is currently not mentioned in the articles.

Articles 36 – 44 - Information to be given to prospective members, members and beneficiaries – in the context of increased prevalence of DC, costs, investment performance and investment options information are crucial. Currently, Article 37(g) and (h) refer to information on investment performance and the structure of costs to members of “*schemes which do not provide for a given level of benefits*”.

Articles 45 – 59 - Prudential supervision - current text does not address the need for knowledge on DC specific risks.

ANNEX 6: COMPARISON OF SOLVENCY II DELEGATED REGULATION AND IORP II REVIEW REQUIREMENTS ON SUSTAINABILITY

SII Delegated Regulation	Requirements for IORP II review:	Comparison SII and IORP II	Rational
Article 275.a: the prudent person principle should take into account sustainability risks.	Article 19(1)(b): within the prudent person rule, IORPs shall take into account sustainability risks in their investment decisions (...)	The same requirement	Insurers and IORP are important channels of savings for investments. Given the long-term nature of their investments, IORPs are more exposed to long-term risks related to unsustainable economic developments. This argument supports requiring IORPs, at least, to consider sustainability risks within the remits of article 19.
Article 275.a: insurance and reinsurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors.	Article 19(1)(b): (...) and for that purpose, IORPs shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors. This should be conducted in a proportionate manner to the nature, scale and complexity of the activities of IORPs.	Requirement restricted to investments and explicit reference to proportionality	Solvency II, in its Delegated Regulation, sets out that insurance and reinsurance undertakings should assess not only all relevant financial risks on an ongoing basis but also all relevant sustainability risks that could cause an actual or potential material negative impact on the value of an investment or a liability. IORPs should integrate the double materiality in their investment strategy and decisions considering the impact they make on environmental and social issues (inside-out) as part of the environmental and social risks that pose to their investments (outside-in). The challenges that the assessment of the double materiality poses for smaller IOPRs require implementing it in a proportionate way.
Article 275.a: where relevant, that strategy and those decisions of an insurance undertaking shall reflect the sustainability preferences of its customers taken into account in the product approval process.	EIOPA advises to amend Article 19 of the IORP II Directive by introducing a provision as follows: “Investment decisions of IORPs shall reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences and to the extent they are consistent with the investment principles set out in paragraph 1.” (Option 1). The Directive should include a definition of “sustainability preferences” consistent with the definition set out for	Similar requirement adapted to IORPs specificities and explicit reference to proportionality	IORPs should implement a method to gauge members’ sustainability preferences giving flexibility to gauge and integrate them into the investment policy, also having regard to the proportionality principle.

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	Solvency II in Article 1(55e) of Commission Delegated Regulation (EU) 2015/35.		
Recital 4: "Insurance undertakings that disclose principal adverse impacts on sustainability factors in accordance with Regulation (EU) 2019/2088 should also adapt their processes, systems and internal controls with respect to those disclosures."	EIOPA believes that IORPs which disclose principal adverse impacts on sustainability factors in accordance with the SFDR should also adapt their processes, systems and internal controls with respect to those disclosures.	The same requirement	If IORPs disclose principal adverse impacts on sustainability factors in accordance with SFDR, their processes, systems and internal controls have to be aligned with respect to those disclosures as is included in the SII recital. However, EIOPA's aim is, as part of the Solvency II review, to advise the COM to promote the disclosure of adverse impacts on sustainability factors. These factors should be included in the Article 293 of Solvency II Delegated Regulation (Business and performance), the requirement to publicly disclose on activities that have a positive impact on ESG in their investment and underwriting activity.
Remuneration policy Article 275.4: the remuneration policies of insurance and reinsurance undertakings should contain information on how those policies take into account the integration of sustainability risks in the risk management system.	Article 23: "The remuneration policy shall include information on how it takes into account the integration of sustainability risks in the risk management system".	The same requirement	The reason is the same for both sectors: Given the importance of remuneration policies to ensure that the staff effectively manage risks identified by the risk management system, the remuneration policies should contain information on how those policies take into account the integration of sustainability risks in the risk management system.
No change yet but EIOPA, as part of its advice to COM on the Solvency II review, has proposed to review Article 297 - Capital management and risk profile (ORSA): [...] 9. "The solvency and financial condition report shall include information on how the undertaking has determined its own solvency needs given its risk profile, including the effect of sustainability risks, and how its capital management activities and its risk management system interact with each other".	To include in the ORA the scenario analysis to quantify the risk exposures to climate change. Article 28(2)(h): "an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change. That assessment should include, in a manner that is proportionate to the nature, scale and complexity of the risks inherent in the activities of the IORP, the use of scenario analyses to quantify the risk exposures to climate change".	The same requirement but explicit reference to proportionality	EIOPA considers that the long-term nature of IORPs investment reinforced the use of scenario analyses as part of the ORA to quantify the climate change risks but given a proportionate approach for smaller IORPs.

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<p>Article 293 - Business and performance: (d) information on the investment policy, including qualitative and quantitative information regarding the consideration of Environmental, Social, and Governance factors in the investment policy of the undertaking and any stewardship activities related to the investees on account of Environmental, Social, and Governance issues.</p>	<p>EIOPA advises that IORPs should consider a stewardship approach to address sustainability risks by engaging with investees to support the transition towards more sustainable business activity in a consistent way to achieve financial objectives and serve beneficiaries' best interests.</p>	<p>The same requirement but explicit reference to proportionality</p>	<p>Stewardship, especially for pension funds as long-term investors, is a critical strategy to push for the sustainability transition through the engagement with investee companies to improve their sustainable practice.</p>
<p>Definitions included: "sustainability risk" and "sustainability factors"</p>	<p>Definitions included: "sustainability risk" and "sustainability factors"</p>	<p>The same requirement</p>	<p>The IORP II Directive refers to ESG instead of sustainability, whilst the SFDR and the Solvency II Delegated Regulation refer to sustainability in the definition provisions. Therefore, in order to align the terminology on sustainability across the different regulations, the IORP II Directive should incorporate sustainability in the different provisions.</p>

ANNEX 7: ABBREVIATIONS

ABO	Accumulated benefit obligation
ACP	EIOPA advisory committee on proportionality
ADR	Alternative dispute resolution
AFM	Autoriteit Financiële Markten
AMSB	Administrative, management or supervisory body
ASF	Autoridade de Supervisão de Seguros e Fundos de Pensões
AuM	Assets under management
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
bps	Basis point
CAA	Commissariat aux Assurances
CCP	Central counterparty
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CfA	Call for advice
CMU	Capital Markets Union
COM	European Commission
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSSF	Commission de Surveillance du Secteur Financier
DB	Defined benefit
DC	Defined contribution
DNB	De Nederlandsche Bank
DORA	Digital Operational Resilience Act
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European market infrastructure regulation
ESG	Environmental, social and governance
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
EUR	Euro
GDP	Gross domestic product
GPG	Gender pension gap

ICT	Information and Communication Technology
IDD	Insurance Distribution Directive
IFRS	International Financial Reporting Standards
IORP	Institution for occupational retirement provision
ITS	Implementing Technical Standard
LDI	Liability-driven investment
MiFID	Markets in Financial Instruments Directive
MIP	Multi-sponsor IORP provider
MTF	Multilateral trading facility
NCA	National competent authority
NSA	National supervisory authority
OECD	Organisation for Economic Co-operation and Development
ORA	Own-risk assessment
ORSA	Own Risk and Solvency Assessment
OTF	Organised trading facility
PBO	Projected benefit obligation
PBS	Pension benefit statement
PEPP	Pan-European Personal Pension Product
POG	Product oversight and governance
PSA	Pension scheme arrangements
PTS	Pension tracking systems
SDG	Sustainable development goal
SIPP	Statement of Investment Policy Principles
SFDR	Sustainable Finance Disclosure Regulation
SLL	Social and Labour Law
SRD	Shareholder Rights Directive
SRP	Supervisory review process
TLPT	Threat-led penetration testing
TP	Technical provisions
UFR	Ultimate forward rate
UN	United Nations
USD	US dollar

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