

Feedback Statement

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

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1. INTRODUCTION

The European Commission requested technical advice from EIOPA regarding the evaluation and review of the IORP II Directive in June 2022. EIOPA carried out a public consultation on draft advice on that request from 3 March to 25 May 2023.

This feedback statement set out a high-level summary of the consultation comments received and EIOPA's assessment of them. The full list of all the non-confidential comments provided can be found on EIOPA's website.

EIOPA received comments from its Occupational Pension Stakeholder Group (OPSG) and from 47 other stakeholders, including consumer associations, IORPs, national and European IORP associations and actuaries.

As part of the consultation EIOPA held a workshop with stakeholders to discuss the draft advice on 11 May 2023.

2. GOVERNANCE AND PRUDENTIAL STANDARDS

2.1. PROPORTIONALITY

GENERAL

One-third of respondents indicated that the current IORP II Directive achieves a proportionate application of prudential regulation and supervision to IORPs, another one-third indicated that this is not the case, including EIOPA's OPSG, and the final one-third did not provide a view on this. Some stakeholders put forward that the diverse landscape of IORPs across the Member States and lack of experience and sufficient data on the application of proportionality does not allow for an answer.

Some stakeholders argued that the minimum harmonisation approach of the IORP II Directive enables Member States to consider the national frameworks and the heterogeneous nature of IORPs. Stakeholders believe that NCAs and national legislators are best to judge to what extent certain regulatory provisions within Member States apply to a particular type of IORPs. It is argued that the present IORP II Directive seems to get the balance more or less correct, considering the results of the EIOPA survey that ten Member States have not implemented proportionality measures for any of the IORP II provisions. Some stakeholders also argued that 'proportionality' should not be used as an argument to weaken certain requirements, like on the depositary and sustainability.

Other stakeholders argued that the IORP II Directive does not achieve its full potential for a proportionate application of prudential regulation and supervision to IORPs. In some cases, NCAs decide not to follow the Directive or not to use the leeway which the current Directive already offers, which is also demonstrated by EIOPA's survey. Frequently, proportionality is applied by supervisors just by only focusing on IORP size. Other characteristics such as the nature, scope, and complexity of their operations are often ignored. Moreover, the IORP II Directive does not always adequately reflect the role of the social partners and other specificities of Member States in the application of proportionality.

Stakeholders from some Member States put forward that the minimum requirements in the IORP II are too burdensome for smaller IORPs. Either because the IORPs exceed the small IORP threshold or because their Member States does not apply the small IORP exemption. This has led or will lead to consolidation of the national IORP sectors.

Several stakeholders emphasise that, in the past years, the regulatory burden on IORPs did not only increase significantly due to the introduction of the IORP II Directive, but also due to the application

of horizontal EU legislation, such as the sustainable finance disclosure regulation (SFDR) and the digital operational resilience act (DORA).

SMALL IORP EXEMPTION

Stakeholder comments

One-third of stakeholders, including EIOPA's OPSG, was in favour of increasing the threshold for the small IORP exemption, while 21% were against and 46% did not respond to the (yes/no-part of the) question. Of those in favour, around 40% agreed with the new threshold proposed in the consultation paper, 40% disagreed with that threshold and 20% did not respond.

Stakeholders opposed increasing the threshold because the threshold depends on size rather than the risk profile of IORPs. Some stakeholders suggested that an increase might be appropriate for DC IORPs, but not for DB IORPs, and IORPs governed by the triangular relationship. An increase in the threshold would also disincentivise consolidation of small IORPs and, hence, prevent economies of scale. Moreover, the small IORP exemption is only used in a handful of Member States, meaning that increasing the threshold would not be an appropriate way to enhance proportionality.

With regard to the specific option of increasing the threshold to 1000 members and beneficiaries and 50 million assets, stakeholders argued that potentially exempting 30-45% of IORPs is excessive. This would jeopardise the protection of members and beneficiaries, but some stakeholders also feared that some Member States – with many small IORPs – would not apply the IORP II Directive anymore. Stakeholders also feared that the broad scope of the small IORP exemption would result in further harmonisation of IORP II requirements that would be too burdensome for smaller IORPs and would only be applicable to larger IORPs. Finally, one stakeholder preferred the current threshold because (closed) IORPs in its Member State tend to have few members, but many beneficiaries.

Other stakeholders agreed that increasing the threshold would allow Member States (or NCAs) more leeway to apply a proportionate approach. In this respect, stakeholders also highlighted the link with horizontal EU regulation (DORA, SFDR). In addition, it was suggested that the IORP II review could define concepts such as small, medium size and large IORPs based on the amount of assets. These concepts could be useful when new horizontal EU legislation is implemented and proportionality for IORPs is needed in that legislation.

To give Member States/NCAs even more flexibility, a couple of stakeholders argued for higher thresholds of EUR 1 billion (when there is role of social partners) and EUR 0.5 billion irrespective of the number of members and beneficiaries. A couple of stakeholders suggested that IORPs with schemes which together have less than 15 members in total should be exempt from IORP II without there being any Member State discretion.

A few other stakeholders argued that the current threshold should be reduced, in particular because it allowed small IORPs not to apply the EU sustainability requirements.

EIOPA OPSG suggested a compromise in relation to increasing the threshold by allowing Member States or NCAs to exempt those IORPs having less than 500 active members and less than 500 beneficiaries and assets below EUR 30 million.

Assessment

EIOPA is of the view that always exempting IORPs – e.g. those with less than 15 members – from the IORP II Directive, without there being discretion for Member States, not only conflicts with the minimum harmonisation approach of the Directive, but also with the principle of risk-based regulation and supervision.

Stakeholders were divided on whether the threshold for the small IORP exemption should be raised.

Taking into consideration those divided views, EIOPA advises to increase the threshold to both 1000 members and beneficiaries and EUR 25 million in assets, more or less in line with the compromise threshold suggested by EIOPA's OPSG. Increasing the threshold would provide Member States more leeway to exempt small IORPs from certain requirements, but also from the requirements in the SFDR and the non-simplified ICT risk management provisions in the DORA.

To prevent a situation where some IORPs will no longer be able to benefit from the small IORP exemption under the new threshold, EIOPA advises to include a grandfathering clause for IORPs with less than 100 members that currently make use of the exemption.

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. 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, a level of EUR 25 million for the asset-size condition - rather than the EUR 50 million discussed in the consultation paper - 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 as a consequence of a substantial part of IORPs being exempted by Member States from (some of) the minimum provisions in the IORP II Directive.

An asset condition of EUR 50 million would have ensured closer alignment with Solvency II but a lower threshold can be justified given that IORP II lays down minimum rules, while Solvency II imposes harmonised regulation. Since DORA and SFDR also impose harmonised rules, 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.

RISK-BASED PROPORTIONALITY FORMULATIONS

Stakeholder comments

The draft advice recommended to restrict the proportionality formulations throughout the IORP II Directive to 'proportionate to the nature, scale and complexity of the (risks inherent in the) activities of the IORP', i.e. removing the 'size' and 'internal organisation' criteria. 27% of stakeholders agreed, 40% disagreed, including EIOPA's OPSG, and 33% did not respond to the (yes/no-part of the) question.

Some stakeholders agreed that small size does not necessarily imply low risk. Other stakeholders argued that 'size' is still a relevant factor in determining the risk profile of an IORP. Moreover, 'size' and 'internal organisation' are objective criteria that are easily to quantify. Removing such criteria may increase differences between Member States in applying proportionality to IORPs. Finally, 'size' is relevant from the perspective of financial stability risk.

Assessment

It is important for EIOPA that regulation is applied in a way that is proportionate to the risk profile of the IORP and, therefore, maintains its advice. A small size does not necessarily mean that IORPs are low risk, even though it is recognised that smaller IORPs are more likely to be low risk. Limiting the proportionality formulations to nature, scale and complexity of the activities will also encourage Member States and NCAs to have a broader perspective than just size when applying proportionality. This would support the stakeholder comments that suggested that there is now disproportionate emphasis on size.

LOW-RISK PROFILE IORPS

Stakeholder comments

The consultation paper considered the possibility of introducing the concept of low-risk profile IORPs in the IORP II Directive. Three options were explored:

- ▶ Option 1: Definition of low-risk profile IORPs and allowance for Member States to exempt these IORPs from certain IORP II minimum standards;
- ▶ Option 2: Definition of low-risk profile IORPs and proportionality measures preventing national additions to some IORP II minimum standards;

- ▶ Option 3: Definition of low-risk profile IORPs, proportionality measures preventing national additions to some IORP II minimum standards and higher standards for non-low-risk profile IORPs.

One-third of stakeholders opposed the introduction of the concept of low-risk profile IORPs, while a quarter of IORPs did not provide a response. Other stakeholders supported option 1 (17%), option 2 (8%), option 3 (4%), a combination of option 1 and 2 (4%), a combination of option 1 and 3 (2%) or only expressed opposition to option 3 (4%). The concept of low-risk profile IORPs is in principle appreciated by the EIOPA OPSG, although some OPSG members reject the idea of defining this category in the IORP II Directive. The OPSG also indicated that the Member State option underlying option 1 would not resolve the “all or nothing” logic regarding the application of proportionality in some Member States. Moreover, the OPSG opposed raising the IORP II standards for non-low-risk profile IORPs.

Some stakeholders disagree with the current burden of supervision and believe that the definition of the low-risk profile IORPs in the IORP II Directive may be a step forward. In several Member States, the principle of proportionality has been not fully applied to all its potential.

Other stakeholders argued that NCAs currently have sufficient latitude to define the proportionality criteria within the framework of the IORP II Directive and to recognise the specifics of their national markets. In that respect, the definition of low-risk profile IORPs does not add any value. Stakeholders also argued that the EU minimum requirements should be defined in such a way that they can be met by all IORPs regardless of their risk profile. If higher requirements are appropriate for high-risk IORPs, these should be defined by national legislators and supervisors.

Many stakeholders fear that the introduction of low-risk IORPs creates two categories of IORPs: one exempted or only subject to a subset of EU requirements and another subject to (possibly further harmonised) EU requirements. Low-risk IORPs may also be perceived as high-quality IORPs, which would not necessarily be the case, particularly because of the exemptions that would be granted to these IORPs. Some IORPs might limit their activities to remain below the low-risk threshold to benefit from the proportionality measures.

Stakeholders argued that the definition of “low risk” is quite subjective. As IORP II is aimed at minimum harmonisation, defining a one-size-fits all criteria to define a uniform “low level of risk” at European level would go beyond the objectives of the Directive. Moreover, one should be careful in assigning a certain institution to a certain risk category, especially when it relates to complex risk measurement on complex institutions. It was argued that expert judgement of the NCA should be key in determining which IORPs should be exempted from certain minimum standards. There was support for the idea of creating additional criteria by which Member States may choose to implement proportionality measures – given that many Member States have used size alone as a

criterion – but the heterogeneity of the IORPs throughout Europe makes it difficult to have a single definition with regard to which IORPs should benefit from the exemption.

Most stakeholders did not provide suggestions for minimum standards in the IORP II Directive that should be considered for possible exemptions or should be applied in a less onerous way (under option 1). Many of these stakeholders argued that they opposed the introduction of the concept of low-risk profile IORPs or that there should be a principle of proportionality applying to all IORPs.

Some stakeholders argued that IORPs should be able to apply proportionality on a “comply or explain” basis - instead of having to comply with a uniform approach – with the NCA being in a position to accept deviations from the minimum standards. Another stakeholder proposed that Member States should be provided with the same discretion to exempt IORPs from the IORP II minimum standards as currently provided in Article 5 on the small IORP exemption.

Suggestions for specific IORP II exemptions: publication of information regarding remuneration policy (Article 23(2)), key functions holders being different from the sponsor (Article 24(3)), own-risk assessment (ORA, Article 28) and the (publication of the) statement of investment policy principles (SIPP, Article 30). Other suggestions not related to the IORP II minimum requirements: any new IORP II requirements, less frequent and detailed reporting requirements – including to ECB, DORA, SFDR and the proportionality measures proposed in the consultation paper for option 2.

Many stakeholders also did not provide concrete comments or suggestions with regard to the conditions defining low-risk profile IORPs, often stating they were against the introduction of such a concept. Stakeholders also argued that NCAs are better placed to assess the risk conditions to consider for labelling low-risk profile IORPs. Moreover, some stakeholders warned of cliff-edge effects by defining only two categories, while a couple of stakeholders believed the conditions selected to be reasonable.

A number of comments were provided on the proposed conditions in the consultation paper:

- ▶ The first condition (interest rate risk) should not make use of the common framework;
- ▶ The second condition (cross-border) seems to be largely irrelevant since cross-border activity is almost non-existent;
- ▶ The size condition (in terms of assets) seems to be arbitrary and contradicts a risk-based approach;
- ▶ Non-tradition asset classes may contribute to diversifying risk and needs better definition.

It was suggested that the first condition could be replaced by IORPs providing DC schemes and/or IORPs which have (re)insured any guarantees. However, a stakeholder argued that where risk is borne by members, this should not automatically mean that the IORP is low risk. It should duly be determined whether the IORP is low risk, e.g. ensuring whether the legal requirements ensure good

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risk management in relation to future retirement benefits. It was also suggested to increase the threshold for non-traditional investment from 20% to 30%. Other suggested criteria:

- ▶ Type of plan (DB plans, hybrid plans, DC plans with protection mechanisms, DC plans without protection mechanisms);
- ▶ Affiliation (compulsory, auto-enrolment, voluntary);
- ▶ Status (open versus closed);
- ▶ Plan design (social and labour law requirements, based on collective agreements, designed by the sponsor, designed by the IORP);
- ▶ Sponsor (single sponsor, multiple sponsors with economic ties, multiple sponsors without economic ties, no sponsor);
- ▶ Security mechanisms (sponsor support, pension protection schemes);
- ▶ Investments (passive management, active management, internal asset management, external asset management, use of unlisted assets);
- ▶ IORP governance structure (triangular relationship, social partners on the board, extent of outsourcing, cross-border IORPs);
- ▶ ESG risk profile and impacts on ESG factors.

OTHER SUGGESTIONS TO ENHANCE PROPORTIONALITY

EIOPA's OPSG suggested that EIOPA should facilitate a regulatory practice allowing a lightened application of the provisions depending on the size, complexity and the risk structure of the respective IORP. NCAs need to overcome the "all or nothing" logic, regarding the proportionality application, which is currently predominant. Moreover, EIOPA should assess whether a basic, different minimum requirement approach should be drawn up, e.g. for DC schemes that invest only in European AIFs and UCITS and have simple activities, internal organization, nature, and scale. Or for DB schemes which profit from sponsor support and a pension protection scheme ensuring that guaranteed benefits can be paid when due. Or else, if special exemptions should be made for IORPs where costs are covered by the sponsor entity or employer.

Other stakeholders also supported the idea of EIOPA assisting NCAs in the application of proportionality – in order to prevent black-and-white approaches – and to consider a proportionate treatment for IORPs providing simple DC schemes or schemes which are subject to a pension protection scheme.

Assessment

EIOPA advises not to introduce the concept of low-risk profile IORPs into the IORP II Directive, agreeing with the majority of stakeholders that provided feedback on this topic that such a harmonised concept would be incompatible with the minimum harmonisation nature of the 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. As such, Member States already have the possibility to apply the concept at national level within the boundaries of the IORP II Directive.

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.

2.2. LIQUIDITY RISK MANAGEMENT

Stakeholder comments

The consultation paper included option 1 to introduce explicit requirements in the own-risk assessment (ORA) and the supervisory review process (SRP) on liquidity risk assessments for IORPs with material derivative exposures. 13% of stakeholders agree with this option, while 46% disagree – including EIOPA's OPSG – and 42% did not respond to the (yes/no-part of the) question.

Many stakeholders agreed that liquidity risk relating to derivative exposures constitutes a significant risk. However, many stakeholders argue that introducing explicit requirements in the ORA is not needed since liquidity risks stemming from derivatives are already part of the risk management system in IORP II. Moreover, singling out specific risks could be counterproductive in that it may focus the attention on less material risks at the expense of a thorough review of the IORP's risk profile. Instead, NCAs should oversee whether such risk is material and whether EU IORPs with significant derivative portfolios are able to meet margin requirements.

Some stakeholders agreed to further specify this risk in IORP II as long as the concrete amendments follow a principle-based approach, leaving the implementation up to the national supervisor. It was suggested that guidance could be provided by EIOPA as to how this risk should be measured and reported, although care would need to be taken to ensure that this would not result in a box-ticking exercise. One stakeholder favoured a broader approach, arguing that other factors could trigger liquidity issues.

Assessment

Most believe it important is 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. However, most stakeholders also argued that supervision of liquidity risks could be left to the NCAs, explaining that addressing this specific risk in the IORP II Directive would be superfluous and possibly counterproductive. EIOPA agrees with this assessment and does not advise to amend the IORP II Directive in this area. Instead, EIOPA intends to issue guidelines or an opinion to NCAs on the supervision of liquidity risk in relation to IORPs with material liquidity risk.

2.3. STRENGTHENING THE CONDITIONS OF OPERATION OF IORPS AND MANAGEMENT OF CONFLICT OF INTEREST WITH SERVICE PROVIDERS

Stakeholder comments

Forty percent of stakeholders, including EIOPA's OPSG, agree that in some situations conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connected to the IORP. Only 17% of stakeholders disagree, while 44% did not respond to the (yes/no-part of the) question. In contrast, only 15% of stakeholders agree that the conditions of operation for IORPs should be strengthened to ensure the proper functioning of the internal market and protect adequately the rights of EU members and beneficiaries from potential conflict of interest between IORPs and service providers. 46% of stakeholders disagree, including EIOPA's OPSG, while 40% did not respond to the (yes/no-part of the) question.

Many stakeholders believe that the management of conflict of interest with service providers should be a requirement of the governance of IORPs. However, many stakeholders also emphasise that NCAs may be in a better position to adopt any additional measures that specifically address the risks proportionately and efficiently, including an assessment of the materiality of such risks, also considering that the current IORP II provisions already capture conflicts of interest.

Some stakeholders are of the view that the additional requirements should be restricted to multi-sponsor IORP providers (MIPs), rather than all IORPs with service providers. Other stakeholders put forward that some parts of the draft advice are not related to the resolution of potential conflicts, such as the proposed amendments on Articles 9 (registration or authorisation) and 10 (operating requirements). In particular, the proposal in Article 9 that IORPs should "review the business plan regularly" and "shall promptly notify material changes to the business plan to the competent

authority” is considered excessively burdensome. Some stakeholders also consider the proposal to (separately) ensure independence as part of the general governance requirements (Article 21), the fit and proper management (Article 22) and outsourcing (Article 31) as unnecessarily burdensome. Moreover, it was questioned whether the requirement to specify a breakdown of costs in the outsourcing agreement is not redundant.

Stakeholders concede that also service providers that are independent from the IORPs whose pension schemes they (partly) manage, may have commercial interests that conflict with the interests of members and beneficiaries. However, there may be safeguards in place to mitigate these risks, e.g. the service providers being owned by the IORP or the members and beneficiaries. These safeguards may also be in place in relation to MIPs, e.g. where social partners select the service providers.

Some stakeholders also indicate that the definition of “service provider” is far too broad, e.g. including the services of a caterer operating the canteen of an IORP, while the issue described only relates to a small subset of pension services providers. In addition, the argumentation to support the broad proposals do not seem to be based on any analysis of actual problems, but just a postulation that conflicts of interest may arise. One stakeholder therefore recommended that the consideration of amendments to the IORP II Directive in this regard should be deferred until the next review, where there may be some more evidence on which to base any such amendments.

Assessment

EIOPA maintains its advice to strengthen the operating conditions of IORPs as well as the management of conflicts of interest with service providers, but with significant amendments to accommodate the concerns of stakeholders. The main concern was that the relevance of the risks identified by EIOPA (viability and sustainability of business models, conflicts of interest with service providers) depend on the specific situation of IORPs in the Member States. Therefore, stakeholders argued that the regulation and supervision of these risks is best placed at the national level. Other stakeholders argued that the proposed changes to IORP II should only apply to MIPs. In particular, the proposal in Article 9 that IORPs should “review the business plan regularly” and “shall promptly notify material changes to the business plan to the competent authority” was considered excessively burdensome.

EIOPA decided against applying strengthened rules only to MIPs. The reason is that the identified risks may be relevant for other IORPs, but also because it is very difficult to provide a proper definition of MIPs, given that there exist a wide variety of MIPs arrangements across Europe. Instead, a risk-based approach was preferred, leaving it up to the Member States and NCAs to implement the rules in a way that is proportionate to the nature, scale and complexity of the IORPs’ activities. To that end, an explicit proportionality requirement was included with regard to the prudential assessment at registration/authorisation. In addition, requirements on the “ongoing-

monitoring” of the of the IORPs’ conditions of operations were moved to Article 49 (Supervisory review process) and an empowerment to require business plans from IORPs on an ongoing basis is now included in Article 50 (Information to be provided to competent authorities). The reason is that it is more appropriate to address “ongoing supervision” under the supervisory review process. In addition, this accommodates comments by stakeholders, since the frequency and scope of supervisory review process should already be proportionate to nature, scale and complexity of the IORP’s activities. At the same time, NCAs are empowered to require the submission of business plans on an ongoing basis, where needed for supervision, but are not required to do so.

The explanatory text of section 2.5 was made more general to prevent the impression that issues around the viability and sustainability of business models and conflicts of interest with service providers would only be relevant for MIPs.

EIOPA keeps its advice that IORPs should also manage or prevent conflicts in areas not already covered by the IORP II Directive, i.e. in relation to independent decision-making – both through the general governance and fit-and-proper requirements – and outsourcing. In general, regulation should be applied in a proportionate manner and supervision should take a risk-based and forward-looking approach, taking into account any (national) specificities. Still, the proposed amendment of Article 21(6) on independent decision-making was substantially streamlined in response to stakeholder feedback. EIOPA also agrees that requiring a breakdown of costs in the outsourcing agreement may be redundant. The advice was amended to ensure that the outsourcing agreements specify all costs, both incurred directly and indirectly, in a transparent manner.

Finally, the definition of service providers was also amended in order to exclude trivial activities, like catering, by specifying that it concerns activities covered by the Directive, in line with the current approach in Article 31(5) and recital 61 of the IORP II Directive.

2.4. EFFECTIVE USE OF DATA

Stakeholder comments

The proposed amendment to Article 50 is met with opposition from the majority of stakeholders. They argue that it is unnecessary, as supervisors already have the authority to collect data on a regular basis. Consequently, any changes to this article would likely impose additional costs on reporting entities. Furthermore, none of the stakeholders supported Option 2 (ITS on reporting). Conversely, many respondents find the reference to reporting by EIOPA too general. They emphasize that EIOPA should provide further clarification on the scope, content, and frequency of data collection.

To avoid double reporting, most respondents suggest that the NCA should be responsible for collecting the data and sharing it with EIOPA. However, a minority believe that EIOPA should be in charge. Some respondents also request a standardized transmission method (such as XBRL) or integrated reporting templates, regardless of which body is responsible.

Assessment

EIOPA acknowledges that the IORP II Directive implies that NCAs have the ability to collect data regularly and that EIOPA can request information from NCAs. However, the lack of an explicit reference in the directive creates challenges in some Member States in both collecting and providing this information to EIOPA. To address this gap, EIOPA proposes closing it in its response to the call for advice. Importantly, this effort should not impose new data requirements or additional costs on reporting entities. EIOPA also maintains that the existing reference to EIOPA reporting is adequate, and there is no need to include specific details about the scope, content, and frequency of data collection in a level one Directive. This perspective is particularly relevant also considering the opposition to developing ITS on IORPs data reporting.

Regarding the issue of double reporting, it is evident from the stakeholder responses, and as highlighted by one responder, that this is primarily a national concern rather than a European one. EIOPA agrees that NCAs are best positioned to define the content of IORPs reporting. Although EIOPA promotes the consolidation of templates and IT infrastructure at the national level, it lacks the authority to enforce this recommendation. Therefore, the draft advice was not materially changed.

2.5. STANDARDISED RISK ASSESSMENT

Stakeholder comments

Many stakeholders welcomed that the draft advice stated that “harmonised solvency rules should not be introduced” and that “EIOPA does not advise any change to the IORP II Directive” in relation to the common framework for risk assessment and transparency of IORPs. Some stakeholders would prefer that EIOPA does not “reiterate” its 2016 opinion on the common framework. A few stakeholders have the view that the common framework should be introduced in the IORP II Directive.

Assessment

Many stakeholders welcomed the draft advice which states that harmonised solvency rules should not be introduced for IORPs and reiterates EIOPA’s opinion from 2016 on the common framework, while clarifying that EIOPA does not advise any changes to the IORP II Directive in this area. Therefore, the draft advice was not changed.

2.6. MISCELLANEOUS

DEFINITION OF SPONSOR

Stakeholder comments

Half of stakeholders, including EIOPA's OPSG, responded that the definition of sponsoring undertaking in Article 6(3) could be expanded to include professional associations. Only one stakeholder disagreed, while almost half of stakeholders did not respond to the (yes/no-part of the) question.

EIOPA OPSG argued that professional associations exist to advance a particular profession, support the interests of people working in that profession and serve the public good. Subsequently, as social partners of a local ecosystem, they can form diverse and including structures that promote collective agreements, especially when they create an IORP and pay for most operational expenses.

One stakeholder agreed with the addition but added that just because professional associations agree on and in that capacity "offer" pensions schemes, that cannot lead to them being considered sponsoring undertakings. The proposed wording for the new definition could be interpreted in a way that is not intended.

Another stakeholder that did not respond yes or no was unable to assess the legal consequences of this proposed amendment. However, the stakeholder stressed that a potential adoption of this proposal may have unintended consequences on national social and labour law. Therefore, an adequate impact assessment at Member State level is needed before giving this advice to the Commission. Another stakeholder commented that the amendment of the definition of 'sponsoring undertaking' potentially broadens that definition beyond occupational pensions, unless one were to interpret the word "professional" as somehow implying a gainful activity that is either employment, self-employment or a combination of these two.

The stakeholder that disagreed argued that the definition of sponsoring undertaking in the Directive is already broad enough to encompass all organisations that act as an employer. In Ireland, other professional organisations or bodies that provide a pension scheme or pay contributions to a scheme for members of that organisation are already subject to the IORP II Directive under existing pensions legislation and, the stakeholder suspects, in other Member States as well. Therefore, it is not obvious to this stakeholder that specific amendments are required here.

Assessment

EIOPA's advice recommends not changing the definition of sponsor. EIOPA considers the current definition in IORP II to be broad enough to encompass professional associations or bodies, where, according to the organisation of the national pension system, such associations or bodies are

allowed to offer pension schemes. Still, the advice suggests that it could be clarified in the recitals that such situations are possible in certain Member States.

INVESTMENT RULES RELATING TO MARKETS

Stakeholder comments

60% of stakeholders, including EIOPA's OPSG, agreed that the definition of regulated market in Article 6(14) should be expanded to include equivalent markets in third countries. Only 4% disagreed and 35% did not respond to the (yes/no-part of the) question.

52% of stakeholders, including EIOPA's OPSG, agreed that multilateral trading facilities (MTFs) and organised trading facilities (OTFs) should be specified in Article 19(d) in order to ensure the same treatment as regulated markets. Only 6% disagreed and 42% did not respond to the (yes/no-part of the) question.

Many stakeholders argued that these amendments would provide a wider opportunity to diversify investments by utilising major well-regulated non-EU markets and different trading venues and potentially drive down costs.

Assessment

In line with the majority view of the stakeholders, the advice recommends that (1) the definition of regulated market is expanded to include equivalent markets in third countries, and (2) MTFs and OTFs are afforded the same treatment as regulated market in Article 19(d). This will enhance consistency with Solvency II and internal consistency within the IORP II Directive, while allowing IORPs to further reap the benefits of (international) diversification.

OWN-RISK ASSESSMENT (ORA)

Stakeholder comments

21% of stakeholders supported the requirement to have a policy for the own-risk assessment (ORA), including a specification of its main components, be introduced in the IORP II Directive. 48%, including EIOPA's OPSG, disagreed and 31% did not respond to the (yes/no-part of the) question.

Many stakeholders agreed that it is appropriate for an IORP to have an ORA policy in place. However, stakeholders also indicated that many Member States (e.g. BE, FI, IE, NL, SE) already dispose of such a requirement and that the detailed components included in the proposed option may clash with national practices. As such, a requirement for an ORA policy should be principle-based and proportionate to allow flexibility at the national level. Other stakeholders argued that any requirements on an ORA policy could be decided at national level in order to preserve the minimum

harmonisation approach of the IORP II Directive and to prevent undue burdens on IORPs, considering the heterogeneity of IORP systems.

13% of stakeholder supported a provision to be introduced in the ORA that the risk assessment should take into account the risk tolerance limits approved by the IORP's management or supervisory body. 48%, including EIOPA's OPSG, disagreed and 40% did not respond to the (yes/no-part of the) question.

Stakeholders responded that the consideration of the risk tolerance limits is already a requirement or common practice in many Member States (e.g. BE, DE, FR, IE, IT, NL, SE), even if the IORP II Directive does not explicitly refer to them. Many stakeholders oppose adding such a requirement to the IORP II Directive, also to prevent conflicts with existing practices and unnecessary burdens. Other stakeholders were supportive - viewing risk tolerance limits and essential part of risk management - as long as the risk measures will not be prescribed in the IORP II Directive and national risk measures can be applied.

Assessment

EIOPA maintained its advice to supplement the ORA with a provision to establish an ORA policy as well as a provision to take into account the risk limits approved by the IORP's management or supervisory body. However, EIOPA agrees with the main concern of stakeholders that detailed requirements, rather than principles, would conflict with the minimum harmonisation approach of the IORP II Directive, reduce flexibility at the national level and, potentially, result in disproportionate compliance costs. Therefore, a new, streamlined option containing the principle of an ORA policy – without a detailed listing of main elements – is recommended. EIOPA believes the requirement to consider the risk tolerance limits approved by the IORP's management in the ORA is already sufficiently principle-based to allow for flexibility in the implementation at national level.

3. CROSS-BORDER ACTIVITIES AND TRANSFERS

3.1. PRUDENTIAL ASSESSMENT WITHIN PROCESS OF REGISTRATION OR AUTHORISATION

Stakeholder comments

There was a mix of responses to the question with some stakeholders expressing they did not feel that a change to Article 9 was needed, while others expressed a change would be supported. The opposition to the amendment was mainly based on the understanding this was an amendment for cross border IORPs only and that the market is small and there is no large-scale regulatory arbitrage (while one stakeholder against the amendment did acknowledge that arbitrage probably did exist). Many of those who did not agree with the proposal cited a lack of evidence in the paper to support the proposal while those supporting it indicated that it was a logical step and could lower the administrative work for cross border IORPS.

Assessment

Firstly, from the responses it was clear that the vast majority of responders (both for and against) thought this amendment would be for IORPs wishing to operate cross border only (the amendment is for all IORPs). The text has been altered to be more explicit that the supervisory review is applicable to all IORPs. The actual prudential assessment process should be constructed by NCAs in order to be suitable for their national systems.

3.2. CROSS-BORDER TRANSFERS

Stakeholder comments

Most stakeholders responded that change was needed to Art. 12 to provide a clearer definition for the majority of members needed to approve a transfer. The majority of respondents pushed for change, and this was split between opting for a non-discriminatory definition between domestic and cross border transfers (Policy option 2) – including the OPSG¹ – and opting for an EU wide definition for cross border transfers only – simple majority (Policy Option 1). However, there were

¹ Alongside the clarification that national law of the host MS takes precedence to define the majority for transfers.

some stakeholders that supported no change and noted that the decisions of how to define a majority should be made at local level.

Assessment

Overall, there is support for change among the stakeholders. Even if general views may be divergent among stakeholders, EIOPA believes that currently Option 1 has sufficient support from stakeholders. Moreover, with choosing Option 1 some remaining points raised about Option 2 will no longer be applicable.

3.3. SUPERVISORY COOPERATION

Stakeholder comments

Overall support and no negative comments.

Assessment

EIOPA proposes to organise an annual expert network meeting only with members representing the competent authorities that work 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.

3.4. POTENTIAL LEARNING FROM OTHER FRAMEWORKS

Stakeholder comments

On the question asked to stakeholders on whether they saw a need to further develop the internal market for IORPs and what the options for development where, the majority of stakeholders were positive about the need for an internal market, but some noted the complexity of harmonisation due to local social and labour laws and taxation laws.

Assessment

In general, there is agreement with the proposed text in the consultation paper. At this stage, EIOPA reiterated the already communicated advice on the pension dashboards and pension tracking services.

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

4.1. PENSION BENEFIT STATEMENT

STRUCTURE AND FORMAT OF THE PBS

Stakeholder comments

Some stakeholders report that the PBS content is too detailed in some Member states with empirical data showing that members do not read it or do not read it in full due to its complexity or length. It seems that in some Member states it could reach up to ten pages or more, while a statement of several pages is considered optimal.

Thus, stakeholders agree overall that the comparability, comprehensiveness, and transparency of information available in the PBS could be strengthened. Some also agree that more clarity and standardization of the PBS at national level is crucial and would help members to better understand their pension situation and avoid confusion given that most members and beneficiaries of IORPs accumulate pensions with several IORPs during their working career due to changes of employers.

Overall, OPSG and other stakeholders support the EIOPA advice to include in the IORP II directive some general principles (for instance on layering) on the design of the PBS, with leeway to Member States to define the templates and EIOPA guidance seen as a relevant complement.

Other stakeholders highlight the need to have regard to the complementarity of the PBS with other communication tools available within the Member state. In their view, the PBS should rather specify where and how to obtain supplementary information, rather than providing comprehensive information.

Some stakeholders noted that for the Member states that adopted the presentation of the information as set out in the EIOPA Model Pension Benefit Statements², this was a welcome development that proved successful as it allows members to easily compare their benefits between various providers and indeed between different jurisdictions that they have worked in.

There are also stakeholders that are in favour of no change and of eliminating any prescriptive communication regulations, considering that:

² https://www.eiopa.europa.eu/publications/model-pension-benefit-statements_en.

- ▶ Even at the Member state level, the differences between pension schemes might be too important to allow for the development of standard models that could be applied to all members within one category, e.g. DB or DC.
- ▶ A standardization of the format would entail operational and IT adjustment costs.
- ▶ Templates are not suited to provide all details in an understandable manner.
- ▶ Content prescriptions do not allow for tailored, layered and comprehensible information.
- ▶ The prescriptions for the PBS to be in the form of single file and durable medium deter innovation.

Assessment

Option 2 to develop a PBS template at EU level received no support from stakeholders, while option 1 (principles-based requirements) was somewhat less supported than option 3 (template developed at Member State level).

Member States and IORPs are best placed to determine how to provide the most effective ways of communication in line with their specificities. There are also Member States that already have a national template that proved successful. Therefore, the development of standardized models at national level is the preferred way forward (option 3) combined with Option 1, compared to the development of an EU template (option 2). However, EIOPA has adjusted Option 3 recognising that comparability between different IORPs can be achieved already via a national Pension Tracking System.

INFORMATION IN THE PBS ON SUSTAINABILITY FACTORS

Stakeholder comments

More respondents were in favour of Option 0 of not including summary information in the PBS relating to sustainability issues compared to those in favour of the draft advice consulted on (option 1). The OPSG indicated that there were different views amongst their members.

Amongst those stakeholders that supported including such summary information, it was argued that this would not only increase transparency, but also empower members to be more engaged in their IORP activities and either steer the IORP to make investments reflecting their preferences, or directly take those decisions. Some of those stakeholders that supported EIOPA's analysis also underlined that the information should be expressed concisely.

The main arguments made for not including this summary information in the PBS included:

FEEDBACK STATEMENT

- ▶ The information is too complex to include in a concise way;
- ▶ It is better to signpost to the information provided already, i.e. in the annual report;
- ▶ The PBS should be related to personal retirement planning.

Several stakeholders also argued that it may not be possible for IORPs to provide the summary in the PBS simply by drawing on the information already prepared for SFDR purposes, and therefore that there would be some additional burden.

Assessment

EIOPA continues to be of the view that it is important to draw attention to sustainability aspects in the PBS. Nevertheless, EIOPA recognises some of the concerns expressed by stakeholders and has revised its advice.

EIOPA considers that it would be relevant to include at least a cross-reference within the PBS to the information disclosed under SFDR. Regarding the proposal to include also a summary within the PBS, EIOPA's intention was that any summary would be very concise and that the information would be drawn directly from the content of existing disclosures under SFDR. At the same time, EIOPA recognises that there can be challenges to identify what information would be appropriate to include in such a summary, as well as potential challenges for members and beneficiaries to understand the information. EIOPA has also noted the recent developments in this area including the comprehensive assessment of SFDR by the Commission and the retail investment strategy proposals, which can be relevant when considering any changes to the IORP II Directive. In this context, EIOPA suggests that the Commission might consider further the merits of including such a summary in the PBS taking into account the ongoing developments regarding disclosure requirements in the area of sustainable finance.

OTHER CONSIDERATIONS REGARDING THE CONTENTS OF THE PBS

Stakeholder comments

The OPSG and various other stakeholders were supportive of including specific additional information items in the PBS as proposed in Option 1.

Other stakeholders opposed any change or addition to the PBS arguing that it would result in duplication of information and unduly lengthening the PBS content. It was argued that any additional information should not be in the PBS but other documents, for example covered by Article 40 on Supplementary information.

Assessment

EIOPA has concluded that it is appropriate to maintain the proposals in Option 1 to include specific additional information items in the PBS. These proposals build on EIOPA's work to develop the model PBS designs and the information is considered useful and relevant to members. Since the information can be provided in summary form, and layering can also be used, EIOPA does not agree with some stakeholders that these additions will unduly lengthen the document.

4.2. DIGITALISATION

Stakeholder comments

The OPSG and other stakeholders are in favour to follow a consumer-centric and more flexible approach as much as possible, and to give IORPs members the option to choose how they prefer to access the PBS document (i.e. through website, email, letter, etc.).

Some stakeholders favour option 2 and prefer to have all information available online and only upon the specific request from the member, to make it available in paper format, in particular in the Member states where the current legislation foresee a digital pension overview. However, other stakeholders oppose option 2 as they see no added value and consider that when it comes to communication tools and channels, one size does not fit all.

In addition, some respondents consider that the PBS should no longer be relevant provided that information is easily accessible through an online portal and that the future of providing adequate pension information lies in the further development of pension tracking systems (PTS) rather than the PBS.

Furthermore, the feedback shows that the state of play with regards to the PBS is very different in various Member states. In some Member states, the PTS is considered to fulfil the goals of the PBS better than the PBS. In others, IORPs wish to be able to make PBSs available exclusively through the PTS, to provide members and beneficiaries a complete pension overview in one location. In other countries, the PTS is still under construction.

The OPSG and other stakeholders are in favour of introducing requirements on the choice architecture design and overall presentation of information (option 3), and to enhance synergies between the digital format of the PBS and other online communication tools (option 4), such as the PTS. Though, other stakeholders consider that the IORP II Directive is not the right place to address the issue of the synergies with the PTS, as the PTS must take into account also entitlements under the state pensions that are not in scope of the directive.

The OPSG and some other stakeholders consider that digital disclosures have the advantages of enabling a more flexible structure, which allows for layering – which received support - and offer great opportunities for presenting information in a more engaging and simpler manner than in paper form by introducing interactive elements, such as infographics, videos and images.

There are also some stakeholders that consider that the current requirements in Articles 36 and 38 of IORP II Directive to make information available in a ‘durable medium’ do not support the implementation of a layered approach.

Some stakeholders are against introducing requirements relating to appropriate choice architecture due to the following reasons:

- ▶ IORPs should have the opportunity to organize communication in the way that is most (cost) efficient for their organization.
- ▶ The effectiveness of a choice architecture is highly dependent on the number of choices available to the member, the design of the scheme and the tools that pension funds have to help members take decisions. Furthermore, such requirements are rarely relevant as members and beneficiaries in most cases do not have any choices.
- ▶ It goes beyond the scope of minimum harmonization and touches upon the design of the pension scheme.
- ▶ The design of the choice architecture lies with the administrative centre, which often has been set up by the social partners, and IORPs have no part in the design of the choice architecture.
- ▶ It is too rigid and does not take due consideration of different practices of choice guidance.

Other stakeholders considers that the term “choice architecture” is vague and should be further explained.

On the frequency of the PBS, the OPSG and some other stakeholders prefer to keep an annual PBS, compared to there being quarterly or semi-annual provision of the PBS, even at request. They argue that a more frequent PBS will raise the costs and will favour “short-termism” by members, especially where members are allowed to change investment options. Furthermore, it was stated that the IORP itself will often not receive regularly updated information by investment firms managing its portfolio.

Finally, some stakeholders consider that no amendment should be made to the directive. They also consider that any type of regulation prescribing channels, formats, medium and nature of communication, would only block innovation. Others highlight the relevance of a principle-based approach given the speed of change in the field of communications technology.

Assessment

Taking into account a significant degree of support for options 1 and 3 that are not mutually exclusive, EIOPA has maintained these options in its final advice. Together, these are considered to enhance the communication provided to members and beneficiaries. A drafting amendment has been made to replace choice architecture with choice guidance which is a broader term. A certain flexibility will also support smaller pensions schemes for which the costs of implementing an effective digital environment can be too high (in proportion to their size).

In view of the broad opposition and recognising that the costs of implementation could be high, EIOPA has decided to remove the requirement for the PBS to be available on a quarterly or semi-annual basis on request.

4.3. TRANSPARENCY ON COSTS AND CHARGES

Stakeholder comments

The OPSG and various other respondents were in favour of the proposals to develop the provisions on cost transparency (Option 1) highlighting the importance of transparency to end users, as well as evidence that this can result in a reduction of costs. Equally, a similar number of respondents expressed a preference for no change. Some of the arguments made were that members might switch to a lower cost fund that is not necessarily in their interests, or that the details of the cost disclosure should remain defined at national level.

Additionally, various specific comments or concerns were raised including:

- ▶ The layering of information is key to avoid information overload.
- ▶ There should be more precise rules on which types of costs should be disclosed, as exist in other EU frameworks, otherwise it is not useful to provide a cost breakdown.
- ▶ There are challenges to provide the information for schemes offering different investment options.
- ▶ Certain cost information, in particular, the estimation of the impact of the costs on the final benefits, would be challenging to include in the PBS as a custom calculation for each member, compared to in a more generic form as would be done in the information to prospective members.

Assessment

Overall, while noting the concerns from some stakeholders on the implementation costs, EIOPA has generally maintained its proposals, which are considered crucial to provide appropriate

transparency on the impact of costs where members bear investment risk or can take investment decisions.

Nevertheless, EIOPA has revised its advice to no longer propose that costs are shown separately regarding different investment options, where applicable, in the PBS. Taking into account the feedback from stakeholders, it is recognised that, while this is important for prospective members in order to decide between different investment options, this is not essential to include in the PBS.

EIOPA is of the view that the information to provide an estimation of the impact of costs on the final benefits could be calculated in a similar way within the PBS as within the information to prospective members.

Regarding the definitions of different types or categories of costs, it is not proposed to specify these elements in the Directive taking into account that in other EU frameworks these details are covered in delegated act or Level 3 materials. This aspect was also addressed in the existing EIOPA Opinion on the supervisory reporting of costs and charges of IORPs.

4.4. INFORMATION ON POTENTIAL RETIREMENT BENEFITS (PROJECTIONS) AND PAST PERFORMANCE

Stakeholder comments

Different views were expressed by respondents. A set of respondents stated their preference for no changes, referring *inter alia* to the fact that existing approaches are working well or the importance for Member States to continue to have flexibility in this area. On the other hand, the OPSG and various stakeholders expressed support in general for the proposed further development of the requirements for projections as set out in Options 1 and 2. This included, in particular, the requirement to present three scenarios and for potential retirement benefits to be shown in real terms.

Regarding Option 1, specific concerns were raised on the proposal for consistency in the modelling used for risk management and information provision purposes, including that this may not be possible or appropriate where standardised assumptions have been developed nationally for the PBS projections. The OPSG were in favour of consistency in principle, but also stated that some flexibility is needed.

Furthermore, the OPSG made several additional suggestions for changes including that the underlying assumptions for projections should be clearly indicated to members, that there should be an alert on the reduction of purchasing power due to inflation, and that past performance

information should be shown for ten years instead of current requirement covering at least five years.

Assessment

Taking into account the support from the OPSG and some other stakeholders, EIOPA has decided to include Options 1 and 2 in its final advice, given the relevance to further develop the requirements for projections to ensure that appropriate information is provided to members and beneficiaries on potential future benefits.

Additionally regarding Option 1, EIOPA agrees that it is relevant to indicate in the PBS that inflation reduces purchasing power and considers that this complements the existing proposal within Option 1 regarding figures being shown in real terms. EIOPA has also adjusted Option 1 recognising that it may not be appropriate to require consistency in the modelling used for risk management and disclosure purposes, as well as in view of the specific proposal for information on the projection assumptions to be available. The latter is in line with the content of the EIOPA model designs for the PBS.

Furthermore, EIOPA has incorporated the stakeholder comment regarding extending the period of past performance shown, taking into account that ten years is also the reference period used for PEPP and PRIIPs.

4.5. OTHER BUSINESS CONDUCT REQUIREMENTS

APPROPRIATE STRUCTURING AND IMPLEMENTATION OF THE SCHEME

Stakeholder comments

The majority of respondents indicated that they did not support Option 1 to introduce requirements to provide for the appropriate structuring and implementation of the pension scheme by the IORP. The issues raised included that these aspects are already addressed via social partnerships or national social or labour law or that requirements relating to product governance are not appropriate to IORPs.

The OPSG did not indicate a clear preference but stated that some of their members consider that additional requirements are not necessary, as well as that additional requirements should be limited to DC schemes where members can take individual investment decisions.

A minority of stakeholders were in favour of introducing such requirements. Additionally, some of these respondents highlighted that the requirements should be principles-based or that they are relevant in the context of commercial IORPs.

Assessment

EIOPA has decided to include Option 1 within its final advice, although from the stakeholder perspective more respondents were in favour of no change. Such requirements are intended to be broader than the existing rules for investments in Article 19 and ensure that in all cases, irrespective of the national specificities or type of scheme, the scheme would be a suitable to the members' and beneficiaries' needs and risk profiles as possible.

As indicated in the consultation paper, EIOPA considers that the requirements could be defined in a way that takes into account, and does not conflict with, existing national safeguards and potential limitations on the responsibilities of IORPs.

DUTY OF CARE

Stakeholder comments

Most stakeholders are, in principle, supportive of introducing duty of care principles, in particular as regards members of DC schemes, to ensure IORPs act in the best interests of their members as these requirements would strengthen the principles outlined in recital 11 of the current directive. A principle-based approach is seen to offer flexibility for NCAs to adapt the implementation to their national specificities. It is also recognised that safeguards should be put in place for members and beneficiaries, such as unbiased and evidence-based advice allowing them to make choices that are in their best interest.

The OPSG and other stakeholders consider that a duty of care for IORPs should be applied beyond circumstances when members are being consulted on decisions.

While stakeholders do acknowledge the importance of a duty of care, at the same time, they highlight various obstacles to the implementation of such provisions and draw the attention to the fact that any new requirements on duty of care would need a definition, in particular in terms of its scope and to possible unintended consequences, such as costs to members, restrictions on choice of investments available, additional documentation and reporting requirements, the burden placed on NCAs who must "ensure that every IORP... acts fairly and in accordance with the best interests of members" and they recommend a more detailed cost/benefit analysis.

The OPSG and other stakeholders also consider that the proposal should acknowledge the role of social partners in the setting up and management of the scheme, the role of the employer as well as the contract and the applicable law which determines mutual duties and responsibilities of the IORP, its members and beneficiaries, as well as the employer.

It was also argued that expectations arising from such a requirement would have to take account of smaller IORPs with very lean administrative structures, which may not be in a position to provide unlimited additional services.

Furthermore, the OPSG and other stakeholders consider that the principle of the duty of care is already part of the IORP II Directive, for instance referring to Article 19(1)(a) on investments, Articles 37, 41 and 45, or that in many Member States such requirements already exist (i.e. in civil and trust law, prudent person rules) but their scope may be limited to certain aspects of the IORP.

Other respondents made suggestions to include principle-based communication and information rules for members, choice guidance and risk preference following approaches taken in some Member (e.g. Netherlands). The OPSG considers that the current requirements for information provisions (pre-contractual information, PBS, periodic reporting, information during the pre-retirement phase and during the payout phase, other communication tools available at national level) are adequate and offer sufficient tools for members and beneficiaries to properly assess the choices or options provided by the IORP and no other requirements should be introduced.

There are also other stakeholders that are in favour of no change arguing in general that it is important to respect the principle of minimum harmonization set up by the IORP II Directive and the country-specific nature for occupational pension schemes.

Overall, stakeholders agree that if any new provisions are to be introduced, they should remain principle based.

Assessment

EIOPA has maintained its advice for requirements to be introduced establishing a duty of care, taking into account overall support from respondents for the principles proposed (option 1).

At the same time, EIOPA acknowledges some of the issues raised by stakeholders, in particular as regards the degree to which an IORP has responsibility for the design of the scheme, and which, depending on the Member state, could lay with the employer and/or collective bargaining partners. Consequently, careful consideration should be given to drafting of any new provisions in terms of the interaction with social and labour laws and to their scope. Equally, the proposal should remain principle-based to offer appropriate flexibility for implementation to different types of schemes.

5. SHIFT FROM DEFINED BENEFIT TO DEFINED CONTRIBUTIONS

5.1. LONG-TERM RISK ASSESSMENT

Stakeholder comments

Stakeholders' comments are extremely diverse, from the very supportive to the ones that would prefer no change. Some are unequivocally impartial. Most stakeholders agree with the importance of EIOPA's Opinion and the need for increased protection in a DC context.

Six stakeholders expressed the direct preference for Option 0, and several others raised several concerns regarding these options mainly because:

- ▶ the proposed options address theoretical risks, but do not necessarily address the specificities of different schemes at the national level;
- ▶ the disproportionate administrative burdens / costs regarding the increased level of protection for members and beneficiaries;
- ▶ or that the risk assessment should be evaluated differently for DC schemes characterized by a large membership base facing a choice of investment options that are sufficiently diversified.

Some support was given for Option 1 (for which some stakeholders admit that measures are already in place at national level, or they exist by being imposed through parallel national legislation), but emphasis was put on the principle based and proportional approach. Some also supported Option 2. However, most agreed that Option 2 is too costly (especially concerning stochastic tools).

In case of members being able to select their investments, more stakeholders agree of the importance of the long-term risk assessment. Stakeholders mostly agree that members are prone not to choose investment options or choose badly (and a mechanism to inform them of the bad choices should exist), so emphasis should be put on the default option. Some stakeholders mention that once investment options are present, responsibility lies with the members or this particular situation is regulated at national level, with no need to intervention at EU level.

Assessment

Given that there is some support for Option 1, if it remains principle based, open to the heterogenous architecture of European IORPs, and adapted with a proportional approach, the option has been modified to better address all concerns. Long-term risk assessment is mostly

accepted as relevant in case of multiple investment options, but with a particular focus on the default option. That is why policy Option 1 includes specifications referring to the default option as well.

5.2. SUPERVISORY REPORTING ON COSTS AND CHARGES

Stakeholder comments

Stakeholder comments are largely supportive (including OPSG), but some do raise some concerns, such as:

- ▶ costs should be presented in a contextualised manner alongside returns/benefits, so as to assess the value for money and not just focus unilaterally on lowest cost.
- ▶ and the current form of the advice does not account for national specificities and system heterogeneity, and neither for current existing reporting practices (which might be better fit for the existing systems, or which might ultimately lead to double reporting).

Some stakeholders express direct concern that the issue of costs is very important for social partners, but not for NCAs or EIOPA, which are institutions to supervise application of legislation but no evaluation of profitability for the supervised institutions.

Some stakeholders have a partial agreement to the advice as long as the granularity of costs disclosure is left solely at NCA level, while other stakeholders completely disagree with the advice or prefer Option 0.

Assessment

There is clear support for the disclosure of costs with some concern regarding the usage of this information by the NCAs. Although, there was concern regarding existing national practices and the granularity of the information proposed by the advice, the benefits of increased transparency of costs and charges and a better evaluation of supervisors of the value added by IORPs prompts EIOPA to keep advice unchanged.

5.3. COMPLAINTS PROCEDURE AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

Stakeholder comments

Stakeholder comments are mixed, no specific questions being set for this section of the consultation paper.

Some stakeholders expressed direct support, while others expressed the importance that the legal advice should be very carefully constructed as there could be possible interference with national provisions for consumer protection.

Some stakeholders also expressed directly that this advice is not appropriate, nor necessary, because it should be a NCA level problem, it is already covered by other national pieces of legislation, or it does not take in account the special triangular relationship existing in occupational pensions.

Assessment

There has been limited reaction to this piece of advice, and only few stakeholders were opposed. The advice remains principle based and has been amended to take into account national specificities and existing specific national regulations in this domain.

5.4. INCREASED TRANSPARENCY OF NATIONAL COMPETENT AUTHORITIES – RISK ASSESSMENT FRAMEWORK

Stakeholder comments

Most stakeholders' comments are supportive of the initiative (including the OPSG). Some concerns were raised in connection to additional costs for NCAs and the possibility of developing a "group-think" attitude among IORPs. Comments indicated that reporting should be developed more principle based. However, the benefits of transparency towards IORPs and potentially towards members, the cost savings of endless thread of communication between NCAs and IORPs on interpreting risk assessment requirements, and reinforcing supervisory culture were also mentioned.

Few stakeholders expressed that they are against this measure.

Assessment

There has been only limited negative reaction to this piece of advice. Most reactions were positive or indifferent (cannot see any specific disadvantages). Given that the advice is already principle based, it has been kept its current form.

5.5. FINANCIAL EDUCATION

Stakeholder comments

No specific questions have been set for this section of the consultation paper, and few comments have been received. There is a general support for financial education, with some stakeholders expressing the need to recognise limitations of financial education, while few others expressing the opinion that this is not an issue for supervisors, nor IORPs. These institutions should rather provide financial orientation.

Assessment

Given the very limited and generally positive reactions to this section, where EIOPA does not provide advice, but rather encourages the recognition of importance of financial education, with its underlying limitations, it has been clarified at the level of the text only that this is not a responsibility to rest only on the shoulders of the NCAs.

5.6. MEMBER AND/OR BENEFICIARY INVOLVEMENT IN IORPS GOVERNANCE

Stakeholder comments

No specific questions have been set for this section of the consultation paper, and relatively few comments have been received with mixed feedback. Some stakeholders generally are in support of the initiative, having in mind that such efforts have already been implemented in their respective jurisdictions and area of competency, with a focus on maintaining MS flexibility on implementation and the role of social partner representation for members and beneficiaries rather than a direct form of involvement.

Some stakeholders, from what we believe to be the same MS, reject EIOPA's advice, with the mention that social partners are represented at board level and there should be no other explanation given on this subject, as it should remain a matter to be settled at MS level.

Assessment

Given the limited and generally non-negative reactions to this section, EIOPA advice remains unchanged. EIOPA has been more explicit on the collective role of members and beneficiaries' representations and that this group of stakeholders, although needing to be involved in IORPs' governance, are not the ultimate decision makers. Due to the principle-based nature of the advice, where there is already a form of engagement with members, at a national level, these situations would already meet this requirement if the NCAs deem so.

5.7. FIT AND PROPER REQUIREMENTS

Stakeholder comments

No specific questions have been set for this section of the consultation paper, and relatively few comments have been received. However, all comments have been against this part of EIOPA advice and have considered there is no specific need for it.

Moreover, some stakeholders have mentioned that by this piece of advice, EIOPA implies that DC schemes are riskier for members and beneficiaries than DB ones, and they explicitly disagree with this.

Assessment

Reactions have been very limited to this section of the consultation paper, even if generally negative. In order to address these concerns alongside other similar NCAs' concerns, the advice has been amended to a more general form, making a connection between fit and proper requirements and the general type of the occupational pension schemes.

6. SUSTAINABILITY

6.1. THE INTEGRATION OF SUSTAINABILITY FACTORS IN INVESTMENT DECISIONS

Stakeholder comments

Opinions on the consideration of sustainability risks are divergent as some favour EIOPA's advice, while some are ardently against the advice. Also, there is a neutral side that is neither against nor for the advice but stresses that EIOPA must carefully consider the policies that might have knock-on effects that could lead to detrimental costs for small and medium-sized IORPs. What almost all stakeholders can agree on is that proportionality of requirements must be ensured in view of the heterogeneous universe of IORPs managing Europeans' pensions.

The OPSG supports EIOPA's stand on IORPs taking an active role in considering sustainability risks in their investment strategies and proposes a 'comply or explain' approach for transparency. They advocate for the use of 'double materiality' assessments to improve IORPs' risk identification and long-term impact considerations, including beneficiaries' sustainability preferences. However, as many IORPs are relatively small, any such assessments should be simple enough to avoid undue burdens and costs, preserve a diversified landscape of pension institutions, and avoid creating too many systemically important entities.

Some stakeholders point out that implementing sustainability mandates may necessitate some financial expenditures to modify systems and procedures. Multiple other stakeholders also raise the cost issue in their comments that proportionality must be maintained. One stakeholder notes that even to the largest of IORPs, the costs stemming from taking into account the sustainability factors are considerable.

Some stakeholders recommend specific guidance for implementation in the Prudent Person Rule (PPR), with emphasis on the role of stewardship and the pursuit of positive sustainability impacts. For remuneration policies, some stakeholders suggested a clear linkage between sustainability performance and executive pay, incorporating relevant ESG metrics and considering the wider workforce's pay conditions.

Multiple stakeholders warn that it would be detrimental cost-wise, if as a consequence of the proposed changes to IORP II, the IORP sector would be required under the SFDR to do extensive sustainability reporting and assessments. Aligning the proposed requirement with Solvency II is

mentioned as a possible solution. Conversely, some stakeholders regret EIOPA's approach of proposing the transfer of the SII Delegated Regulation to IORPs.

Assessment

EIOPA aligned the advice for IORP II on 'double materiality' with the Solvency II approach, as this was EIOPA's aim in the first place to reach cross-sectoral convergence. Moreover, the advice explicitly states that IORPs should not automatically fall under Article 8 SFDR because of the proposed sustainability requirements.

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').

In the IORP II review CP, the 'outside-in' and 'inside-out' requirements were distinct. However, in the Solvency II Delegated Regulation, the 'inside-out' requirement is included in the 'outside-in' requirement. According to Solvency II, insurers only need to consider the 'inside-out' – the impact on sustainability factors – where it poses a direct risk to them. The deleted IORP II's double materiality requirement was more robust as it necessitated IORPs to consider the impact on sustainability factors unconditionally.

In general, EIOPA believes consideration of potential long-term impact on sustainability factors as part of prudent person principle requirements should not trigger the application of article 8 SFDR as long as IORPs do not disclose the potential long-term impact on sustainability factors in a way that members can perceive as promotion of environmental and social characteristics.

Costs for IORPs from the integration of sustainability factors in investment decisions will be significantly offset in the medium to long term by advantages such as improved resilience for IORPs and overall economic and financial system stability resulting from responsible investing. Furthermore, these sustainability prerequisites will not lead IORPs to concentrate solely on financial risks but will also encourage them to consider the financial benefits and opportunities arising from sustainability-related matters.

6.2. FIDUCIARY DUTIES

Stakeholder comments

As in the earlier part, the reception of EIOPA's advice is mixed.

The OPSG supports amending the IORP II Directive, encouraging IORPs to incorporate sustainability preferences in investment decisions. The OPSG suggests that technological solutions be used to gauge members' sustainability preferences and improve financial literacy. For collective DC schemes

where members have the right to make investment choices, the IORP ASMB make the sustainability decisions, potentially including a default investment option with sustainability considerations. Finally, the OPSG backs the idea of considering sustainability preferences in the SIPP.

Some stakeholders argue that IORPs' structures already accommodate the sustainability preferences of members. This happens when members and beneficiaries or their representatives are involved in the governance structure and the set-up of the investment policy. Some stakeholders believe that IORPs should continue to be allowed to make use of their governance structures to assess sustainability preferences, e.g., through members and beneficiaries or their representatives on the board and to reflect them in a single investment policy considering as well other investment principles. Few stakeholders believe the ESG decisions for the various investment options are still up to the boards of the IORPs, where both employees and employers are represented. Some stakeholders warn against the high cost and complexity of conducting member surveys to determine sustainability preferences, advocating instead for the incorporation of these preferences into investment decisions as long as existing governance structures are utilised and surveys are not mandated.

A notable amount of stakeholders does not support EIOPA's draft advice for IORPs to take into consideration the sustainability preferences in investment decision-making.

Conversely, some stakeholders raise this as a very important issue that IORPs should gauge membership preferences if they can do it in a cost-effective way.

A group of stakeholders supports adding Art. 19(1)(f) when speaking about sustainability preferences and their consistency with other investment principles included in Article 19(1)(a) and (c) of the prudent person rule.

Assessment

There are several views, and it is impossible to accommodate all of them. While keeping proportionality in mind, it would be good for the IORPs to gauge membership preferences, but only when it could be done in a cost-efficient way.

EIOPA assesses that IORPs membership preferences should be included in the investment decisions because it will benefit the members ultimately. It will increase the members' satisfaction and trust in the IORP. Even more importantly, IORP will better understand its members' risk tolerance and preferences. With this information IORPs can design an investment strategy that better suits members' needs, leading to improved long-term outcomes.

EIOPA changed the approach on sustainability preferences. EIOPA will propose to the Commission to introduce 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.” The 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.

6.3. STEWARDSHIP

Stakeholder comments

Stakeholder feedback contains multiple mixed views.

According to the OPSG, IORPs could promote a responsible stewardship approach by engaging actively with their investee companies and holding them accountable for aligning with EU sustainability goals. Rather than prescribing how they should incorporate sustainability factors, IORPs could emphasize the need to document these considerations in their investment principles and voting policy reports and request information about fund managers' voting behaviours or policies at AGMs. Small IORPs could be exempted from direct reporting obligations due to the reporting carried out by their service providers, and they could include selection criteria for fund managers that provide access to relevant information via SFDR reporting. Smaller IORPs could also join groups or associations to streamline their engagement approach and exert more influence through stewardship.

Significant stakeholders state that stewardship is already regulated by SRD II, and IORPs fall under the scope of that directive. Some also state that the SRD II provides institutions with the right level of proportionality on sustainability matters. One stakeholder believes that the current stewardship framework and approach deployed by the SRD II pivoted on the “comply or explain” principle is the most suitable for ensuring that sustainability matters are considered in a proportionate and flexible manner.

Assessment

EIOPA is advising that IORPs should consider a stewardship approach to address sustainability risks in a proportionate manner.

EIOPA sees multiple benefits from a stewardship approach to address sustainability risks. Ultimately, IORP is able to create more long-term value for its members by addressing sustainability risks with the stewardship approach. It will not only aid IORPs in its risk management practices but will give the IORP reputational benefit and investment efficiency compared to its peers. Also, it will be able to align its interests with the investee companies and use its influence to strive towards a more sustainable future.

The advice was kept unchanged.

6.4. BROADER SOCIETAL GOALS

Stakeholder comments

Many stakeholders agree that raising awareness and solving the gender pay gap (GPG) is a very important task. But the task is outside EIOPA's remit as some stakeholders have stated. One stakeholder questions whether the IORP (Directive) is the right place to address solutions to closing the gender gap. The gender pension gap is a problem for society. The IORP has no influence on the continuation of the employment relationship or on the salary on which the contributions regularly depend (albeit indirectly in some cases). The pension can only be saved for those employed in the industry/at the employer. The IORP also does not represent society as a whole, but only the employees within its scope. Another stakeholder states that reducing the gender pay gap (GPG) is primarily the role of politics and the employing companies.

Assessment

EIOPA advises raising awareness, without proposing changes in the IORP II Directive. EIOPA does not see the comments are in contradiction of that advice. The advice was not changed.

7. DIVERSITY AND INCLUSION

7.1. D&I IN MANAGEMENT BODIES

Stakeholder comments

There are mixed views on the subject from stakeholders. Multiple stakeholders welcome EIOPA's advice on D&I in management bodies. Some stakeholders view that D&I requirements should not be dealt with in prudential legislation. A few stakeholders remind us that introducing D&I rules for IORPs in the prudential regulation should also respect the social legislation in member states, i.e., including the results of social elections.

The OPSG advocates for diversity and inclusion in IORP management bodies but also highlights that the current consultation paper lacks proper analysis of key issues related to gender and corporate governance. The OPSG believes the move toward a European approach to D&I should be based on a thorough assessment of existing national approaches and considers that size, nature, and internal organization of an IORP are crucial for D&I. Lastly, it critiques the draft advice's proposal for gender-neutral remuneration policy as lacking context and clear problem definition, stressing that the principle of equal pay for equal work is already embedded in EU law.

The OPSG concurs with EIOPA on the need for a unified interpretation and definition of D&I within the European framework. Existing EU legislation addressing D&I is comprehensive and must be taken into account. Any new definitions by EIOPA or other supervisory bodies must respect these existing legal mandates, considering the growing intricacy of D&I elements. Many other stakeholders share the view that it would be beneficial to have a European definition of D&I.

Assessment

The Commission has asked us to "explore prudential requirements to include diversity and inclusion issues in relation to management bodies". Therefore, EIOPA will advise the Commission as it has asked from EIOPA.

EIOPA has assessed that it makes sense to align the D&I requirements, with the consideration of IORP-specificities, in IORPs with other legislation, e.g. CRD IV. This is to ensure that the requirement of equal pay towards employees can be enforced by the supervisors vis-à-vis an insurance undertaking's remuneration policy supervision.

Whilst the Article 157 of the TFEU contains principle of equal pay for males and females, TFEU does not bind individual undertakings as TFEU binds Member States instead. EIOPA advises introducing

this principle directly into IORP II Directive. If Commission implements this, it will bind IORPs to follow this principle (via national transposition of the IORPs II Directive). EIOPA's advice takes into account social legislation.

The advice was not changed and EIOPA views that it would be beneficial to have a European wide D&I definition from the COM.

7.2. REPORTING ON D&I

Stakeholder comments

Multiple stakeholders support the EIOPA's advice, while some view that D&I should not be included in a prudential directive.

The OPSG acknowledges the need for improved reporting to enhance D&I in IORPs, suggesting it be managed at the Member State level based on potential standards from EIOPA. However, they highlight that many IORPs are lean organizations with few board members, implying setting gender representation targets may not be meaningful, and emphasize that the primary requirement is for all board members to be fit and proper.

Some stakeholders question whether public disclosures should be done at a national level due to the heterogeneity of the IORP sector. Some stakeholders raised concerns about the costs of creating additional reporting framework.

Assessment

EIOPA has assessed that it would be beneficial for the NCAs to receive quantitative information on D&I from undertakings. It will enable the NCA to improve its understanding of its supervised entities and their state on D&I topics. Also, it will also help undertakings to improve performance since multiple studies suggest that diverse teams often perform better than homogeneous ones. Also, a better understanding of D&I will enable them to tap into a larger talent pool, improve the working culture and greatly improve their public image. These benefits will outweigh the costs to the NCAs and the undertakings. EIOPA also reminds that in Europe, there is already an established technical solution for the IORP reporting (PF XBRL reporting framework) and including a new D&I reporting sheet is cost-efficient and simple.

The advice was not changed. Receiving data is the first step in assessing a topic and that is why it is crucial to gain data from this topic.

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