aba answer to the Consultation paper on EIOPA's regular information requests towards NCAs regarding provision of occupational pensions information

(27 October 2017)

Q1: Do you agree that the data availability and reporting processes for occupational pensions need to be improved?

- No, we don't. Looking at the already existing reporting requirements for IORPs on the national level and the future ECB reporting requirements for pension funds there is an enormous amount of data available on occupational pensions provided by IORPs. . In particular we don't see the need for a single framework for EIOPA's regular information requests regarding IORPs. We support EIOPA in complying with its two duties as set out in Articles 18 and 32 of the EIOPA Regulation of macro prudential supervision (stability of the financial system or markets) and the assessment of market developments as mentioned by EIOPA in the problem definition of the impact assessment (in Annex III on page 46 of the consultation paper). For fulfilling these tasks we suggest that NCAs can use the data and technical format that IORPs will have to deliver according to the **draft ECB regulation on statistical reporting requirements for pension funds** without requiring a separate and additional reporting process. In other words, EIOPA should be able to make sufficient use of the same data that is made available to the ECB for financial stability purposes (see recital 2 of the raft ECB regulation). The streamlining of the required reports would adequately reduce the increase of cost, administration and complexity for IORPs while delivering both EIOPA and the ECB with the data they require.

  On legal grounds alone, we consider it unjustifiable and unacceptable for EIOPA to effectively impose on IORPs a single framework for regular information requests by "the backdoor": namely by imposing the requirement on NCAs that will automatically pass the requirement on to IORPs. Article 35 of the EIOPA Regulation (Collection of Information) cannot be considered as a "carte blanche" because EIOPA is only allowed to request information to carry out the duties assigned to it by the EIOPA Regulation. Therefore, Article 35 has to be seen especially in the context of Article 1 (2) EIOPA Regulation. According to Art. 1 (2), EIOPA shall in relation to IORPs act within the powers conferred by the EIOPA Regulation but also within the scope of the current IORP Directive. Since the IORP II Directive is the exclusive basis for prudential regulation and potential EU harmonization and does not contain reporting requirements similar to those laid out in Pillar 3 of Solvency II, EIOPA should not impose these on NCAs. We do, however, accept that EIOPA should be able to receive the IORP data required by the ECB in order to fulfil its tasks defined in Article 18 and 32 EIOPA Regulation while respecting these restrictions.

  The single framework proposed by EIOPA is expected to have fundamental consequences which EIOPA itself recognizes (see EIOPA Consultation paper, page 49): "national supervisory reporting requirements may need to be amended, which depending on the Member States' legal framework may require changes to current law which certainly requires a profound justification;" In this context, one has to keep in mind that EIOPA is not allowed to act as some kind of European legislator influencing the national legal framework.

  The NCAs are legally charged with the responsibility of supervising IORPs. This is perfectly appropriate and adequate because the NCAs are best placed to do so within the context of national social and labour law. It is unlikely that EIOPA would be better placed to fulfil this task.

The national reporting requirements for IORPs are already extensive (for Germany, amongst others: Versicherungsberichterstattungs-Verordnung, BaFin „Sammelverfügung zu Anzeige- und Berichtspflichten der Versicherungsunternehmen über ihre Kapitalanlagen", BaFin and EIOPA stress tests, detailed projections, asset inventory (Sicherungsvermögensverzeichnis), significant credit reporting (Millionenkreditmeldungen nach § 14 KWG), special data requests). Therefore, a significant amount of data is already available (perhaps not always in exactly the format or breakdown as requested by EIOPA). However, the separate and additional EIOPA requirements will lead to unnecessary redundancies and an increased level of bureaucracy. Therefore, an additional area of reporting requirements for IORPs including a new format and producing significant work and cost for IORPS is completely unacceptable.

Q2: Do you agree that EIOPA is proposing to request information relevant and necessary to fulfil its tasks?

No (please see above answer to Q1).

- Apart from the fact that EIOPA does not have a legal basis to require this type of reporting there are cost and benefit aspects already explained under our answer to Q1.
- In the insurance sector the adherence to a proper ordinary European legislative procedure, culminating in the Solvency II Directive, was generally deemed necessary to require insurers to report this kind of data. As a consequence, it surely cannot be deemed appropriate or acceptable if an initiative proposed solely by EIOPA leads to similar requirements for the pensions sector. The first complied with proper governance by democratically installed processes; the second is tantamount to a "cloak-and-dagger operation" and must therefore be clearly and emphatically rejected on legal grounds alone.
- In addition, the EIOPA "cloak-and-dagger operation" is against the better regulation agenda of the EU Commission.

Q3: Would you propose other information to be covered by EIOPA's regular data requests?

No (please see our answers to Q1 and Q2).

- IORP data gained by the upcoming ECB regulation and aggregated IORP data available on the national level is sufficient and should be used. According to the EIOPA Consultation paper (p. 4, section 1.7) the first annual reporting of end 2018 data should be carried out in 2019 and the EIOPA "reporting deadlines are aligned with those set by the ECB". The proposed date for the first reporting (i.a. national implementation of IORP II Directive and EBC reporting requirements) and the timelines for reporting of liabilities are unrealistic. The deadline for reporting of end-of-year figures should at least be 30 April of the following year that is 16/17 weeks after year end. The availability of valid data has to be taken into account for the definition of deadlines.

Q4: In particular, is further information than provided in the list of assets necessary to adequately reflect the effectiveness of the risk management with derivatives? Does the pertaining use of international codes, like LEI or ISIN, allow for reducing the necessary information to be reported in the list of assets?

- No, no further information is needed. The proposed EIOPA reporting requirements are clearly too detailed (for example, a look-through approach for funds, more comprehensive individual asset data, an "attribution analysis" to liability changes, breakdown of investment income and administrative costs). In particular, instead of looking at single asset positions (within the assets base) EIOPA should focus on getting a holistic picture on an aggregate level. For that, the available data at the national level and in the future the ECB reporting requirements are more than sufficient.
- In part, new (compared to the EIOPA stress test) classifications are planned. The EIOPA reporting requirements contain positions which are not available or unknown in a German balance sheet or analyses (eg margin for adverse deviation, types of changes in the technical liabilities). Actuarial reports and internal actuarial analyses do not show this differentiation and have different classifications.
- Consequences which should be avoided: Clear increase of the internal work and the one-off and regular costs for IORPs; need to buy and introduce new IT modules or software; an increasing number of interfaces;

The use of derivatives in German IORPs is generally carried out via investment funds or target funds. We support the use of ISIN and LEI and the ECB access to information about the investment funds provided in the ECB Regulation draft. This will reduce the work for IORPs significantly, which will only have to report the code numbers.

Q5: Do you agree with the proposed thresholds and limitations in scope of the data requests? Should the requested set of individual IORP data be reduced or broadened to enable relevant analyses at EU/EEA level?

No.

- **Currently, EIOPA does not have a legal basis to directly approach individual IORPs and EIOPA should not do it in an indirect way by asking the NCA to pass on all reporting templates of individual IORPs.** Neither Article 18 nor 32 EIOPA Regulation justify the demand for individual data. The only exemptions in the EIOPA Regulation are actions in emergency situations where a single NCA does not comply with the EIOPA decision (Article 18 (4)) and concerning information, where the information is not available or is not made available by the NCA and several other national authorities (Article 35 (6)). **The NCAs are responsible for the supervision of individual IORPs.** As already stated above, the NCAs are legally charged with the responsibility of supervising IORPs. This is perfectly appropriate and adequate because the NCA are best placed to do so within the context of national social and labour law. It is unlikely that EIOPA would be better placed to fulfil this task.
- **If the requirement to deliver additional and separate data according to the templates proposed by EIOPA were to be implemented, and we strongly feel it should not, the level at which individual IORP data should be obtained must be increased significantly. It is inappropriate to require NCAs to report the contents of all reporting templates of IORPs in excess of €1bn balance sheet total. Rather, it should be in the order of €50bn. This would be a level more comparable with a small insurer. Furthermore, the second condition (about the**

five biggest IORPs in terms of balance sheet totals in the Member State) should be deleted as it is entirely inappropriate.

Q6: Do you agree with EIOPA's assessment of the options' impacts?

No (please see our answers to Q1 and Q2).

Q7: Do you welcome the envisaged opportunity to use XBRL for the reporting of pension data?

No, we strongly reject the use of XBRL.

- The use of the XBRL format for the reporting of pension data by IORPs would lead to a material (financial) burden – a technical standard which is not required by the relevant IORP II Directive or current national regulatory reporting requirements and thus only a massive "side effect" or "accessory part" of EIOPA's reporting request. We strongly suggest not requiring IORPs to deliver data according to the XBRL format to the NCAs. Also, under the Solvency II regime, XBRL is only "the mandatory technical format to be used for reporting from National Competent Authorities (NCAs) to EIOPA (so-called 'second level reporting')" but not the mandatory format from IORPs to the NCAs as stated by EIOPA (see https://eiopa.europa.eu/regulation-supervision/insurance/tool-for-undertakings). According to EIOPA only a number of countries request Solvency II submissions in XBRL from insurance companies to the relevant NCA ('first level reporting'). If this is the case within the fully harmonized regulatory regime of Solvency II the principle of not requiring institutions to deliver in XBRL format to the NCA must be even more applicable to IORPs. Thus, current national standards for data delivery of IORPs should be sufficient and in case – if at all - the NCAs should be in charge to transform the data to the format required by EIOPA.

  In the worst case scenario, namely that the XBRL format would be mandatorily required from IORPs, we ask for a much longer implementation period to allow IORPs and their service providers to prepare for this step. In countries, such as Germany, where insurers have to deliver the data in the XBRL format to their NCA, the insurance sector was given much more time to prepare to the XBRL standard that was only required by the fully harmonized regulatory regime of Solvency II. Moreover, in case of requiring XBRL directly from IORPs it would at least be appropriate to provide without cost for an XBRL-editor similar to EIOPA's Solvency II reporting tool T4U, especially for smaller IORPs. We suggest this although we know that the tool T4U will not be supported anymore because of budget restrictions according to EIOPA (see link above) from the second half of 2017 and for the 2.2.0 and all following taxonomies of Solvency II reporting. As the T4U was oriented toward small and medium sized insurance companies to create, edit, correct, complete and validate XBRL documents we would see an even stronger case for assisting IORPs in coping with XBRL.