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

Fields marked with * are mandatory.

Responding to the paper

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

Comments are most helpful if they:

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

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

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

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About the respondent

* Please indicate the desired disclosure level of the responses you are submitting.
  - (●) Public
  - ( ) Confidential
  - ( ) Partly confidential

* Stakeholder name

aba Arbeitsgemeinschaft für betriebliche Altersversorgung e.V.

* Contact person (name and surname)

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Contact person phone number

Questions to stakeholders

Executive summary

* Do you have any comments on the executive summary?

- (○) Yes
- (●) No

Chapter 1. Introduction

* Do you have any comments on the introduction?

- (●) Yes
- (○) No

Please provide your comments on the introduction.

The review of the IORP II takes place very shortly after its implementation. This means that several IORPs are still in the process of implementation of some of the IORP II´s provisions, of which many are quite challenging, and that generally, the experience with the directive is still limited.
Given the heterogenous landscape of IORPs in the EU, which is primarily rooted in differences in social, labour and tax law, aba has always stressed the importance of the IORP II being a minimum harmonization directive. With great concern, we note that at odds with this and going beyond the European Commission´s CfA, with re-gard to several aspects, EIOPA seems to push for full harmonization in this consultation paper (e.g. by trying to anchor its Opinions in the directive and proposing the adoption of provisions of full harmonization directives such as Solvency II and banking regulation). We feel that EIOPA wants to move away from principle-based supervision to rule-based supervision, which we do not support.
Generally, we note that on several occasions, there are incongruencies between the concrete advice EIOPA gives and its previous analysis of the issue at hand.
We appreciate the overview of the European IORP Sector in chapter 1.2 including Annex 1 in the EIOPA consulta-tion paper. We call for an annual European IORP Overview based on the EIOPA reporting and analogous to the European Insurance Overview (link to the 2022 report: https://www.eiopa.europa.eu /publications/european-insurance-overview-2022_en#description).
The current chapters in the Consumer Trends Report and Costs and Past Performance Report (which according to information given to us by PensionsEurope should be merged in the future) as well as the 15-page "EIOPA Report on Cross-Border IORPs" (for only 0.2 percent of IORPs' total number of members and beneficiaries, and 0.4 per-cent of total assets) neither have the right focus nor show the importance and diversity of IORPs in the EU.

Chapter 2. Governance and prudential standards

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

- (●) Yes
- ( ) No

Please explain your answer.

Prior to answering this question, we would like to stress out that the implementation of the IORP II, in particular with regard to information requirements and the ORA, was a major challenge for IORPs. It has led to increased resource requirements and therefore also higher costs. We believe that this should be acknowledged in the re-view of the directive, which, as pointed out already in our comment to the introduction of the consultation paper, takes place very shortly after its implementation.
That being said, we hold that the character of the IORP II Directive – an EU minimum harmonisation approach with no delegated acts – is adequate, should be maintained and lived in practice (i.a. dealing with EIOPA opin-ions).
We support the current proportionality principle in the IORP II Directive ("proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities"), which does not only focus on the activities, but also on the organisation and size of IORPs and thus provides for diversified opportunities to adequately deal with the principle on a national level. This means that in principle, there is the possibility for IORPs e.g. set up by a sponsoring company or by social partners to fulfil the EU requirements appropriately. Un-fortunately, in practice, this is prevented by many detailed requirements of national and European supervisors, which attempt to create convergence in particular with insurance regulation. Proportionality is not only important in relation to IORP II, but also when considering the cross-sector financial market regulation, i.a. in the area of Sustainable Finance and Digital Resilience (DORA) – hence, we hold that instead of EIOPA´s proposal to no longer considering “size” and “internal organisation” when it comes to the application of proportionality provi-sions (p. 35), those criteria should rather not only be maintained, but be relevant in all EU regulation that affects IORPs.

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

- ( ) Yes
- (●) No

Please explain your answer and provide any alternatives.

As stated by EIOPA itself, the proposed amendments would lead to 30% - 45% of IORPs in the EEA falling under Article 5 (p. 33). If Member States decide to implement the provisions of the respective Article, the majority of them probably in smaller Member States. Politically, it is not a solution to push the EU prudential requirements higher and higher so that only a minority of IORPs is able to adequately meet them.
Furthermore, taking into ac-count the principle of subsidiarity, regulation affecting only some of the Member States should predominately be decided by national legislators, not by European institutions.
The goal should be EU regulations with sufficient flexibility for Member States and IORPs. Subsidiarity and proportionality should be lived! This is the only way to take into account the diversity among IORPs which is the result of labour, social and tax law on the one hand and history and economic affordability on the other hand.

Q2.3: Do you agree with the draft advice to restrict the proportionality formulations throughout the IORP II Directive to 'proportionate to the nature, scale and complexity of the (risks inherent in the) activities of the IORP', i.e. removing the 'size' and 'internal organisation' criteria?

- ○ Yes
- ◉ No

Please explain your answer.

The diversity among IORPs within the EU is – due to good reasons – huge. According to recital 32 of the IORP II Directive, IOPRs have a social function and the triangular relationship between the employee, the employer and the IORP is important and should be adequately taken into account. Therefore, we support the current propor-tionality principle in the IORP II Directive ("proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities"), which does not only focus on the activities, but also on the size and internal organisation of IORPs and thus provides for diversified opportunities to adequately deal with the principle. Removing the 'size' and 'internal organisation' criteria would lead to less flexibility in implementation for NCAs and IORPs.
IOPRs should not be treated as purely financial service providers (see the aforementioned recital 32 of the IORP II Directive). We do not consider the envisaged convergence with insurance regulation necessary.
It is very important for us that the criteria “size” and “internal organization” are maintained. Since imple-menting IORP II into national regulation in Germany, the reference to these criteria has proven its worth and should thus not be removed. Many IORPs in Germany are operated on a non-profit base by the social partners or are set up by their sponsoring companies.

- Size of the pension scheme: Requirements that mainly increase fixed costs disproportionately affect small IORPs. For these IORPs, the removal of “size” as a criterion would therefore represent a serious obstacle for these IORPs to fulfil their task of providing adequate pensions. At the same time, these institutions do not play a significant role in financial stability.
- Size and internal organization of the IORP: Members and beneficiaries are typically represented in the management and/or supervisory bodies of IORPs, thereby guaranteeing that the institution acts in their best interest. Proportionality measures no longer being applied to these IORPs would consequently not change their business practices, but only lead to additional administrative burdens, which increase costs and ultimately reduce the pensions that are paid.

In addition, a full risk analysis, just to be able to prove low risk, means too high of a burden for smaller IORPs. In smaller IORPs, the regulatory costs are distributed disproportionately among members and beneficiaries.

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

- ○ Yes
- ◉ No

Please explain why or why not.

According to our understanding, EIOPA proposes to define a new category of “low-risk profile IORPs”, to which some proportionality measures may be applied. We adamantly stress that this must not lead to the situation that for “non-low-risk profile IORPs”, the application of proportionality measures should no longer be possible – potentially even paving the way for EU full harmonisation. This is very worrisome to us, especially given EIOPA´s proposal to remove “size” and “internal organisation” from the proportionality formulations throughout the di-rective (see also our answer to Q2.3).

The EU minimum requirements should be defined in such a way that they can be met by IORPs regardless of risk. If higher requirements are appropriate for high-risk IORPs, these should be defined by national legislators and supervisors.
The nature and extent of the rules and requirements depend less on the risk and more on the set-up of the IORP (i.a. distribution with corresponding cost structures, profit orientation of the institutions, committee structures, role/interest of sponsoring companies and social partners, collective approach of the pension scheme, nature and extent of the individual beneficiary's choices).
The requirements of an EU minimum harmonization directive combined with a real proportionality approach should be drafted in such a way that they can be fulfilled after the national implementation. Defining minimum standards for possible exemptions by the Member States only makes sense within an EU full harmonization di-rective (see Solvency II). If a full harmonization approach shall be fulfilled, it should be clearly described.
In general, we note that EIOPA´s proposals correspond rather to a rule-based supervision and hence contradict the IORP II´s basic precept of a principle-based supervision. Given the heterogeneity of IORPs in the EU, we defend the approach of a principle-oriented prudential regulation.

Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?

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

- (●) Yes
- ( ) No

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

Even though we do not support the concept of “low-risk profile IORPs” (see our answer to Q2.4), we would like to make the following comments:
Regarding condition 1: This criterion requires the carrying out of a „standardized risk assessment” and hence the application of the “common framework for risk assessment”, to which we are opposed (see our answer to Q2.14). Especially smaller IORPs will not be able to comply with this.
Regarding condition 2: According to the current data of EIOPA, cross-border activity of IORPs only comprises 0.2 percent of IORPs’ total number of members and beneficiaries and 0.4 percent of total assets. Due to these very small numbers, it does not seem appropriate to link the application of proportionality aspects to such a condition although it is described as some kind of positive criterion.
Regarding condition 3: The threshold of € 1 bn. appears arbitrary. There also seems to be no dynamization envis-aged. Generally, this proposal does not reflect the heterogeneity of IORPs in the Member States.
Regarding condition 4: How should real estate investments be classified? In Germany, they are considered to be traditional investments.

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

- (●) Yes
- ( ) No

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

> Even though we do not support the concept of “low-risk profile IORPs” (see our answer to Q2.4), we would like to make the following comments:
> The nature and extent of the rules and requirements should generally depend less on the risk and more on the set-up of an IORP (i.a. distribution with corresponding cost structures, profit orientation of the institutions, commit-tee structures, role/interest of sponsoring companies and social partners; collective approach of the pension scheme, nature and extent of the individual beneficiary's choices).
> Many of the facilitations proposed for low-risk profile IORPs seem rather symbolical to us. As a real relief, the EIOPA reporting requirements, which are necessary for reasons of financial stability, should be reduced signifi-cantly for IORPs whose total assets are not higher than €1 bn.

Q2.7: The IORP II Directive takes a minimum harmonisation approach, laying down minimum governance and prudential standards. If the concept of low-risk profile IORPs was to be introduced in the IORP II Directive, should institutions that are not low-risk profile IORPs be subjected to standards exceeding the current minimum, as proposed in the analysis of option 3 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5?

- ( ) Yes
- (●) No

Please explain your answer.

> We strictly reject this proposal. As stated above, aba fully supports the notion of IORP II being a minimum harmo-nisation directive. We are therefore opposed to the idea of dividing IORPs into “low-risk profile” and “non-low-risk profile”. We are also opposed to establishing standards that go beyond minimum harmonisation in the IORP II.
> The reasons for the chosen approach of EU minimum harmonisation – mainly the respective national labour, so-cial and tax law of the individual Member States, apply to all IORPs. NCAs are therefore better suited than EIOPA to assess a proportionate application of the IORP II´s provisions for their supervised institutions. Consequently, we adamantly reject full EU harmonisation of IORPs.

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

- (●) Yes
- ( ) No

If yes, please provide these suggestions and explain why they should be considered.

> EIOPA develops the opinions together with the NCAs, which contribute their existing regulations and experience. In view of the diversity of pension systems, this often results in a large collection of proven

requirements, the complete application of which is generally neither necessary nor appropriate.
Some NCAs interpret EIOPA Opinions as being as legally binding as EIOPA Guidelines, which are to be implemented as closely to the text as in any way possible. This proceeding results in regulation that is extremely extensive and detailed that is not only very costly, but also does not fit the respective national systems at all and hence hardly provides any added value. EIOPA Opinions are not meant to represent an EU-wide convergence of IORP rules based on an EU minimum harmonisation directive. We suggest an according clarification in the EIOPA Regulation.
We propose adding a disclaimer at the beginning of every EIOPA Opinion, stating that the Opinion is not legally binding. If NCAs decide to implement an EIOPA Opinion, the principles of proportionality and subsidiarity apply so that NCAs have sufficient leeway to respect national specificities.

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

- Yes
- (•) No

Please explain your answer.

We believe that liquidity risk assessment should be expected if the hedging volume is material and relevant for liquidity issues. For instance, long put / long call strategies with no margin call risk should not be considered rele-vant and consequently not trigger any additional assessments.
According to Article 25 of the IORP II, liquidity risk management is already integrated into pension funds´ risk-management processes. Furthermore, an “assessment of the effectiveness of the risk-management system” does already have to be carried out as part of the ORA (Art. 28 (2)(b)). These provisions seem sufficient already for IORPs whose hedging volume is limited.

Q2.10: Do you agree that in some situations conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connect to the IORP?

- Yes
- No

Please explain your answer with relevant supporting evidence.

EIOPA´s concept of “MIPs” in general shows some kind of blurring and weaknesses in its rationale. Figures with regard to MIPs in prior consultations and survey were not always comprehensible. Before taking any measures in this regard, we believe that EIOPA should clarify the terms in order to achieve regulatory certainty. Due to the lack of a clear and explicit definition of MIPs, it is for example very difficult to understand and track the numbers shown for MIPs in Germany with most assets under management and total MIP-members.
The definition of “service provider” given by EIOPA is far too vague and does not achieve a satisfactory distinc-tion to “sponsoring undertakings”, which are certainly no “regular” service providers as they are a part of the triangular relationship that is specific to IORPs.
Having said that, we agree with EIOPA that in some instances, conflicts of interest between IORPs and service providers can take place, in particular if the MIP does not conduct any business in its home country. However, at least the German experience suggests that stricter requirements are not necessary. Neither has EIOPA presented evidence of occurrences of such conflicts of interest on a significant scale. Already in its

current form, the IORP II provides stipulations on how to deal with such conflicts (especially regarding governance, outsourcing and the ORA).
Given the scope of this problem, which is rather limited, we do not understand why EIOPA´s corresponding advice relates to all IORPs, for which there is no need. We believe that EIOPA should define the scope of its proposal before formulating stipulations that apply to all IORPs. In particular, we do not see any benefit in the proposed breakdown of outsourcing costs. Agreements between IORPs and service providers usually comprise a package that is made up of different components. Those components and the total price of the package are interdepend-ent. Additionally, as services are often specifically tailored to an IORP, they are often not comparable.

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

- ○ Yes
- ◉ No

Please explain your answer with relevant supporting evidence.

Given the scope of the described problem, which is rather limited, we do not understand why EIOPA´s corresponding advice relates to all IORPs, for which there is no need (see our answer to Q2.10).

Q2.12: What are your views on introducing an explicit provision in Article 50 empowering supervisors to collect quantitative information from IORPs on a regular basis? Please explain your answer.

Especially due to the EIOPA and ECB requirements, the reporting requirements for IORPs have increased substantially during the last years. This caused significant additional costs for the introduction of the new reporting and ongoing costs for the IORP, which are ultimately paid by the members and beneficiaries in the form of lower pen-sions. EIOPA has extended its reporting requirements again in February 2023. We do not see any problem that has to be solved by changing IORP II as proposed by EIOPA.
Moreover, there are the clear rules in Art. 35 EIOPA Regulation. If EIOPA does not receive any data from individual NCAs, the procedure is described in Article 35 (5) and (6) EIOPA Regulation.

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

- ◉ Yes
- ○ No

If yes, please provide these suggestions.

The reporting templates by EIOPA and German NCA BaFin require the same basic content, but a completely different breakdown, which results in a high additional effort for IORPs. This already concerns the technical data format for the transmission, so that an IORP has to buy an additional IT system and operate two systems for regulatory reporting in parallel.
Theoretically, given the IORP II´s character as a minimum harmonization directive and that it is the NCAs that are directly supervising IORPs, double reporting could only by avoided by the elimination of EU

requirements. As this is no realistic option, we propose that in line with the principle of subsidiarity, EIOPA uses the data it can gather from NCAs and limits its own requests to information on systemic risks and financial stability, which it needs to fulfil the tasks that are assigned to it by law.

Q2.14: What are your views on reiterating in the draft advice EIOPA's opinion to the EU institutions on a common framework for risk assessment and transparency, considering that the draft advice does not advise any change to the IORP II Directive in this area?

We reject any requirement to implement the EIOPA opinion on a common framework for risk assessment and transparency for IORPs for many reasons (see i.a. OPSG position paper on EIOPA's Opinion to EU Institutions on a Common Framework for Risk Assessment and Transparency for IORPs: https://register.eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-OPSG-17-02%20Position%20Paper%20-%20Risk%20Assessment%20and%20Transparency%20for%20IORPs.pdf). Not only would IORPs have to carry out a regular risk assessment using the common framework and publish the results, but the NCA would also have to take regulatory measures against the individual IORPs based on the results of these risk assessments.
The BaFin Circular on Own Risk Assessment (ERB-Rundschreiben, published 30 December 2020) is adequate for German IORPs.
We are convinced that a cash flow analysis is a much better tool to analyse the long-term risks of an IORP.
We welcome and support EIOPA's statement not to "advise any change to the IORP II Directive in this area."

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

- ○ Yes
- ○ No

Please explain your answer.

We are unable to assess the legal consequences of this proposed amendment. However, we stress that a potential adoption of this proposal may not have unintended consequences on national social and labour law. We therefore see the need for an adequate impact assessment at Member State level before giving this advice to the European Commission.

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

- ◉ Yes
- ○ No

Please explain your answer.

As pointed out in the consultation paper, this amendment to the directive would lead to legal certainty and con-sistency about the "predominant" investment universe for IORPs and supervisors, while not having any perceptible drawbacks. aba therefore supports the proposal.

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

- (●) Yes
- ( ) No

Please explain your answer.

As pointed out in the consultation paper, this amendment to the directive would lead to legal certainty and con-sistency about the “predominant” investment universe for IORPs and supervisors, while not having any perceptible drawbacks. aba therefore supports the proposal.

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

- ( ) Yes
- (●) No

Please explain your answer.

The existing IORP II requirements are appropriate and sufficient. We clearly reject a further development of IORP II requirements towards Solvency II requirements and any kind of full harmonization approach.
Given the heterogeneity among IORPs, we believe that according solutions, if necessary, can better be found at the national level. Many Member States and NCAs have already put in place such specifications at the national level, among them Germany (see BaFin´s circular “Aufsichtsrechtliche Mindestanforderungen an die eigene Risikobeurteilung “ (ERB) von Einrichtungen der betrieblichen Altersversorgung” / “Regulatory minimum require-ments for the own risk assessment (ORA) of institutions for occupational retirement provision”.
As the ORA is already defined in the IORP II, the added value of this proposal is unclear. However, it would certainly cause additional burdens for IORPs.

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

- ( ) Yes
- (●) No

Please explain your answer.

The existing IORP II requirements are appropriate and sufficient.
In Germany, for instance, an according provision exists at national level already. As a next step, the ORA would have to be conducted in a market consistent way to enable comparisons of IORPs´ respective risk tolerance limit. This would represent a further development of IORP II requirements towards Solvency II provisions, which we adamantly reject.

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

	Yes	No

* Section 2.2: Implementation and effectiveness	○	◉
* Section 2.3: Proportionality	◉	○
* Section 2.4: Liquidity risk management	○	◉
* Section 2.5: Conditions of operations and management of conflict of interest	○	◉
* Section 2.6: Effective use of data	○	◉
* Section 2.7: Standardised risk assessment	○	◉
* Section 2.8: Miscellaneous	○	◉

Please provide your comments on section 2.3 Proportionality

Recital 32 of the IORP-II-Directive states that “IORPs are pensions institutions with a social purpose that provide financial services. They are responsible for the provision of occupational retirement benefits and should therefore meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such institutions should not be treated as purely financial providers”. However, in contrast to this stipulation, IORPs have become increasingly included in the scope of EU financial market regulation (e.g. SFDR, DORA), often without taking into account the specific characteristics of IORPs and the proportionality principle.
Most IORPs are very small compared with pure financial institutions and do not dispose of comparable resources. Additionally, such IORPs in general operate in less complex business areas. Furthermore, IORPs across the EU are diverse, as they are embedded in their respective national framework defined by social, labour and tax law. As a result, IORPs find themselves increasingly confronted with the question of how they can put into practice the growing amount of EU legislation with an acceptable cost-benefit-ratio or with any added value at all. This is especially true for EU-regulations (which are often accompanied by various delegated and implementing acts, guidelines as well as Q&A issued by ESAs), which leave little to no leeway with regard to implementation for the Member States. Given these recent legislative tendencies, it is necessary to underline the character of the IORP II as an EU minimum harmonization directive and strengthen the role of Member States in implementing regulation aimed at IORPs. Hence, we propose the introduction of the fol-lowing supplementary Article 1a to the IORP II:
“IORPs are pension institutions with a social purpose that provide retirement benefits within the respective multi-pillar framework of a Member State. This role and the triangular relationship between the employee, the employer and the IORP have to be adequately acknowledged. Before IORPs are included in the scope of regulations and directives aiming at financial market regulation, an impact assessment with respect to the IORPs in the individual Member States is therefore to be carried out. In doing so, it shall be reviewed whether a direct adoption of the financial market regulation is in accordance with the business purpose of the IORPs. Furthermore, in light of the national legal framework, it shall be assessed whether a direct adoption of the financial market regulation can be justified from a cost-benefit perspective from the beneficiary´s standpoint.
The inclusion of IORPs in such regulation is only possible if the results of the impact assessment are positive. If and to the extent that the results of the impact assessment are negative, the relevant regulation for IORPs can be adapted on a principle-based approach and be implemented at the national level through the Member States.”

Chapter 3. Cross-border activities and transfers

Q3.1: Do you think the issue of potential regulatory arbitrage regarding the registration/authorisation process could be addressed based on the draft advice?

We want to emphasize that from the perspective of multinational sponsoring companies, the main reasons for carrying out cross-border activities are to increase the efficiency of their occupational pension arrangements in several countries by bundling them into one single IORP, e. g. by streamlining governance, increasing operational efficiency or to pool assets and liabilities. This applies in particular to the consolidation of legacy DB plans and the efficient set up of DC plans in various Member States.
Consequently, under the current legal framework (especially with regard to the rules the IORP II lays out for transfers), we do not share the concerns about regulatory arbitrage and hence do not think that addressing it should by a priority in the current review of the IORP II. This is especially the case since no evidence that such activity is actually taking place has been presented, also not in Annex 1 of this Consultation Paper. The low number of existing cross-border IORPs also indicates that regulatory arbitrage is not a phenomenon that is taking place on a relevant scale. However, if, as proposed by EIOPA, the requirements to carry out cross-border transfers should be lowered as a result of the IORP II review, we do see a greater potential for regulatory arbitrage in the future.
We do not feel that the amendment of the regulation for a perceived very restricted topic, let alone the applica-tion to all IORPS, is required. Higher EU prudential standards on registration or authorization for all IORPs and especially the domestic entities are neither necessary nor appropriate. Nevertheless, and independently from additional provisions, the IORP II is a minimum harmonization directive. Consequently, according to this ap-proach, the requirements within the Member States to implement the IORP II may differ, but always have to fulfil the minimum standards provided for in the directive. For these reasons, there is especially no need for an addi-tional ongoing monitoring of the prudential soundness. This objective is already a key task of the NCAs. There is no need for an extension within IORP II in relation to any kind of IORP.

Q3.2: What are your views on the policy options presented to address the issue of defining majority of members and beneficiaries needed for approval of a cross-border transfer?

We generally do not think that conducting individual queries in collective systems is always the right approach. We believe that the approval on transfers should be taken by representatives in the relevant committees of IORPs. We therefore support the EU minimum approach in the rules in Article 12 of the IORP II, which respects the diversity among IORPs and in the Member States (“a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives. The majority shall be defined in accordance with national law.”).
In our view, the requirement to conduct a survey beforehand is rather an obstacle for cross-border transfers. We hold that the main goal of regulating transfers is to safeguard the interests of

- the members who are part of the transfer
- the members who are not part of the transfer and
- the sponsoring companies.

Hence, we believe that the regulation of transfers should focus on this goal rather than to lift potential re-strictions to the free movement of capital.
We want to stress out that we are fundamentally opposed to the idea of regulating and/or streamlining national transfers at the European level. We simply do not see any necessity for EU regulation. We do not agree with EIOPA´s statement that different requirements with regard to domestic and cross-border transfers might violate EU law (p. 93). As indicated by the term itself, national transfers represent transfers within the same legal space. Transfers to a different legal space, i.e. cross-border transfers, are fundamentally different to this. Different re-quirements with regard to both are hence justifiable. On the contrary, we hold that requiring the same standards to be applied for national and cross-border transfers would imply an unjustified and forced equal treatment of unequal issues.

EIOPA´s rationale seems to be based on its understanding that European citizens lose out on investment opportu-nities because of the not properly developed internal market for cross-border IORPs, which we also disagree with (see our answer to Q3.3).
All in all, we favour Option 0 (no change).

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

From our perspective, occupational pensions are always part of a national pension strategy, and are closely linked to national labour, social and tax law and embedded within the general national pensions framework. The competence for these areas lies with the Member States. The existing obstacles for cross-border activities and transfers cannot be removed by a supervisory directive only – nor should they.
The large majority of IORPs are set up in such a way that cross-border operations are simply not an option for them. This is the case because they are operated by a single company that only has employees in one Member State or by social partners of a given economic sector. This renders cross-border activities pointless or impossi-ble, as social partners cannot operate cross-border and social and labour law rightfully remain the competences of the Member States. Hence, rationales for many IORPs to operate cross-border depend primarily on the countries in which the employees of the sponsoring company or companies are located as well as on their governance structure, and less on incentives set by the European regulator.
It has to be pointed out that IORPs differ significantly from providers of third pillar pension products: Other than insurance companies, IORPs do not offer their pension scheme on a free market, on which consumers decide which product best suits their need. Instead, occupational pensions provided via IORPs are directly linked to an employment contract. Thus, members of IORPs are either – depending on the Member State and the employment contract – automatically or compulsorily enrolled in its pension scheme or left with the option of “taking or leaving” it. Therefore, we disagree with EIOPA´s notion that “members and beneficiaries lose out on scale and poten-tial savings of access to a wider IORPs market” (p. 100).
We feel that EIOPA´s analysis focuses mainly on MIPs, but these have to be adequately defined and further evalu-ated after knowing which entities are comprised within this concept. Before that, we cannot comment on them in a sensible manner (see also our answer to Q2.10).
Notwithstanding the arguments above, there is an interest from multinational sponsoring companies to either expand their existing cross-border IORPs or to go this way allowing them to (further) increase the management efficiency and consolidate their pension arrangements. For this stakeholder group, further analyses of potential paths to further develop cross-border activities would be welcomed. However, we cannot stress enough that no disadvantages should arise from this for IORPs operating only domestically.
Last but not least, we hold that all IORPs, irrespectively of whether they operate cross-border or not, would ben-efit from an internal market for service providers that cater to their specific needs.

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

	Yes	No
* Section 3.2: Implementation and effectiveness	○	◉
* Section 3.3 Relevant Legal provisions	○	◉
* Section 3.4 Other Regulatory Background	○	◉
* Section 3.5 Previous EIOPA Reports	○	◉
* Section 3.6 Prudential Assessment Within Process of Registration or Authorisation	○	◉
* Section 3.7 Cross-border Transfers	○	◉
Section 3.8 Notification Procedures	◉	○

* Section 3.9 Supervisory Cooperation	○	◉
* Section 3.10 Potential learning from other frameworks	◉	○

Please provide your comments on section 3.8 Notification Procedures

We support EIOPA´s advice of introducing a simplified procedure for pure DC schemes in case of non-material amendments of a previously noted cross-border activity and a simplified procedure for the expansion of a previ-ously notified cross-border activity with only one harmonized DC plan for all sponsoring companies.
Furthermore, a simplification of the procedure of other than DC schemes in certain cases, e.g. addition (new transfer) of legacy DB commitments from a new sponsor with the similar pension obligations characteristics to an existing section/separate fund of a cross-border IORP would be welcomed.

Please provide your comments on section 3.10 Potential learning from other frameworks

Many barriers for an internal market for cross-border IORPs cannot be overcome in the IORP II Directive. Waiving compliance with the national labour, social and tax requirements would go against the competence of the Member States and lead to discrimination against national IORPs. For example, the EET taxation of occupational pensions entails considerable obligations for German IORPs so that taxation can take place in the payout phase.
The creation of a European occupational pension scheme would require fundamental changes that are not feasible in the given context. Occupational pensions are – and will be – determined predominately by national legislation. They are embedded in the respective national pension schemes. Therefore, the EU does not have any competence to create a single European Pension Scheme and it is doubtful whether the Member States are willing to concede any additional competence to the European legislator.
We do not see PEPP as a model for occupational pensions.
Within the EU Commission, we see DG EMPL as responsible for EU pension policy.

Chapter 4. Information to members and beneficiaries and other business conduct requirements

Q4.1: Where a template for the pension benefit statement has been introduced already at Member State level, to what extent do you think this has led to improvements? Please explain your answer in terms of what has worked well and what has worked less well.

From aba's point of view (and against the backdrop of our experiences from the German legal and supervisory framework where there are no binding templates for PBS) there is no convincing case for templates to be used by all types of pension schemes for their pension benefit statements. The implementation of templates was in some way part of the national public discussion before the implementation of IORP II, but in the end, the chosen ap-proach better reflects the diversification within the national pension schemes.
That being said, there may be a potential benefit of templates when members and beneficiaries have choices (between providers or pension schemes or investment options) and accordingly an increased need for comparing information. For this purpose, EIOPA already offers some guidance to DC schemes with the two templates for DC schemes.
For IORPs, legal requirements on PBS already are a crucial issue given the high administrative burden and costs they produce. Any changes to the current requirements should therefore be carefully considered.

Regarding the policy options, for the reasons stated above, aba prefers “option 0”. In our experience, existing differences in terms of structure and layout between the pension benefit statements from different IORPs do not hinder an adequate understanding of the mandatory contents of these documents.
Notwithstanding this, should EIOPA decide to propose a different option to the European Commission, we would like to make the following statements:

- We think that although principle-based requirements “while taking into account the characteristics of the pension schemes, e.g. DB, DC (option 1)” would, in principle, much better reflect the minimum harmonisation approach of the IORP II Directive, we see neither an urgent need nor an additional benefit of more standardisation with regards to the PBS design.
- We therefore certainly do not see a necessity for any EU level standardisation of the format (taking into account the characteristics of the pension schemes; option 2) and also oppose new requirements for a MS level standardisation of the format (taking into account the characteristics of the pension schemes; option 3). In our view, even at the Member State level, differences between pension schemes might be too great to develop standards that can be applied to all members within one category, e.g. DB or DC.

For further comments on the structure and format of the PBS please refer to our comments on section 4.2.4.

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

We do not agree with the introduction of summary information related to possible sustainable investments. In our view, PBS are neither the appropriate place nor medium for duplicating this type of information. The disclo-sure and publication of this information has already been dealt with by other legislative acts.
Regarding the aspect of sustainability, Article 30 of the IORP II Directive (Statement of investment policy princi-ples) already stipulates to disclose how the investment policy takes environmental, social and governance factors into account. The statement shall be made publicly available. Article 40 of the IORP II Directive mandates that information on where and how possible ESG-information can be found must also be part of the pension benefit statement. These obligations have preceded the newer disclosure requirements from the SFDR by roughly three years.
Pension benefit statements should in general be limited to personal information (relevant for an individual’s re-tirement planning) and not be overloaded with generic information.
Furthermore, PBS should, in accordance with findings of behavioural research, be concise and easily comprehensible. Sustainable investment in contrast is a complex matter that can, if presented on the one hand in too great detail and on the other hand also too much “compressed”, create confusion as well as insecurity and produce unnecessary workload by inviting questions of the PBS’s addressees. The costs resulting from these questions would be particularly futile if investment decisions are taken by the governing bodies for all scheme members without individual choices being possible for the beneficiaries.
Regarding the policy options, for the reasons stated above, we prefer option 0 (no change).
Notwithstanding this, should EIOPA decide to propose option 1 to the European Commission, we would like to make the following statement:

- We welcome that option 1 (Inclusion of summary information in the PBS on sustainability issues) correct-ly mentions additional costs resulting from adding summary information on sustainability. However, we feel that these costs would not be matched by corresponding added value or benefits for scheme members.

As to sustainability-related information from the application of the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation, we also see the risk that EIOPA’s proposals might lead to additional and even higher legal requirements for IORPs, especially in light of the proposals in Chapter 6. Please refer to our comments on section 4.2.5. for further explanations.

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

Flexibility for IORPs in order to adapt structure and content of PBS to the specific nature of the pension scheme remains our main concern in order for the PBS to fulfil its function. Furthermore, digitalisation offers promising perspectives for providing members with the required information in a more understandable and also more effi-cient way (please also refer to our answer to Q4.5 on this topic).
Needless to say, Member States also need this flexibility when implementing a revised IORP-II-Directive.
Our general feeling is that the amount of information provided in PBS today is suitable in most cases. We do not share the implicit conclusion that PBS generally lack relevant content and therefore we do not share some of the ideas laid out in chapter 4.2.6.
Especially in a context in which DB systems are prevalent (and will continue to do so in the near future) we see little value in adding information on investment results and returns into a PBS. The same applies to all collective systems where investment decisions are taken not by the members, but for members by the responsible bodies of the IORP, which are typically set up either by employers or social partners. But also from a practical point of view, the proposed amendments and new requirements in the consultation paper would be hard to fulfil and increase the length and complexity of a pension benefit statement.
That being said, sponsors or social partners who set up pension schemes should continue to have the possibility to add relevant and specific information on a voluntary basis, tailored to the scheme members' needs.
Regarding the policy options, for the reasons stated above, we prefer option 0, i.e. we propose to leave the exist-ing regulations unchanged. Generally speaking, new requirements should be avoided that would be burdensome to fulfil for the IORPs, produce additional costs for members or reduce the efficacity of the PBS which should remain concise and easily understandable for all recipients.
Notwithstanding this, should EIOPA decide to propose option 1 to the European Commission we would like to make the following statement:

- We welcome that according to EIOPA's proposal for the "inclusion of additional information items in the PBS" (option 1) more information on the nature of investments the return on investments (at least) over the past 12 months should be required only when and where members bear investment risks.

Q4.4 Overall, what are your views on the extent to which the current pension benefit statement has delivered on its objectives (e.g. clear and comprehensive as well as relevant and appropriate information)?

The current requirements in the IORP II Directive on PBS have been transposed into national law merely a little more than four years ago. Implementation has been time- and cost-intensive and the corresponding national provisions should therefore also continue to exist for the time being.
Also, based on our answers to Q4.3, we feel that the current benefit statements have overall delivered well on the IORP II Directive's objectives.
In order to create added value for recipients of PBS, we see more promising ways than adding requirements for the contents or intensely standardising the format of PBS. Most importantly, we would like to underline that func-tioning pension tracking systems can greatly contribute to the intended effects of PBS. In addition to the infor-mation on one isolated entitlement, they provide context through a more holistic overview.
Hence, a successful establishment of PBS could open a perspective for a transition to a fully digital format (see answers to Q4.5).
Currently, in several Member States (e.g. Germany), many IORPs and other stakeholder invest much effort into the development of national pension tracking systems. Ideally, the information in the pension tracking systems and in the pension benefit statements should be congruent. Avoiding unnecessary disruptions and guaranteeing stability and predictability with regard to legal requirements is therefore very much desired, especially in the middle of an ongoing development phase.
With regard to the policy options, for the reasons stated above, we prefer option 0 (no change). We would

like to reiterate our recommendation for more flexibility as expressed in the answer to question 4.3. We decline option 1 that aims at additional contents for PBS.

Q4.5: Are there other aspects that you think EIOPA should consider in order to facilitate or leverage digitalisation? If yes, please explain these other aspects.

As to the current requirements for the PBS's medium, we feel they are still suitable for serving all recipients' needs, notwithstanding that digitalisation has progressed considerably since the entry-in-to-force of the IORP II and its transposition into national law by the MS.
Generally, we believe that the future of providing adequate pension information lies in the further development of PTS rather than expanding the PBS. Many scheme members already have or will soon have by their IORPs/scheme providers or with their national PTS a fully digital information resource. We see no problem in the currently existing de facto right for IORPs to autonomously choose between "on paper only" or "by electronic means with the possibility to request a paper copy". In contrary, this approach has proven highly successful, on the one hand giving the opportunity e.g. for "smaller" IORPs to have a default option by providing a paper copy, on the other hand enabling IORPs to provide the PBS via electronic means, if applicable/possible. Today, in cases where not all members can be reliably reached electronically, a letter-only mailing is for many IORPs still the simplest and most efficient way of distributing the PBS.
In a longer perspective, however, we feel that once a NTS is frequently used, it has the potential to render an IORP's PBS obsolete and may be able to fully replace it. In such a scenario, the relevant legislation should ensure that an individual IORP can fulfil its information duties (solely / already) by providing all legally required data to the NTS. A future full replacement of individual PBS would not be disadvantageous because all benefit-related information would remain available and would be displayed in a context with other pension entitlements (the most important being first pillar pensions), thus providing an important aide for retirement planning.
Additionally, we suggest that the existence and the state of development of a NTS should also play a role in de-termining the extent of information duties. Whereas in an initial phase (as is the case in Germany), legal infor-mation duties shape the data requirements that the tracking systems impose on pension institutions, PBS could ultimately turn redundant or even obsolete once a national PTS is well established and frequently used by scheme members. It should be examined to allow dispensing IORPs from sending out PBS that participate in their NTS.
As to the policy options, we prefer option 0 (no change).
Notwithstanding this, should EIOPA decide to propose a different option to the European Commission, we would like to make the following statements:

- We assume that creating an opportunity for the scheme member to choose his or her preferred medium (option 1) would reduce the efficiency of existing information processes. It would lead to a significant increase of administrative burdens (and costs), complicated further if scheme members can change their preferences at will or too frequently. The added value for members would be no sufficient match for these occurring costs that will also inevitably affect the benefits in a negative manner. We also oppose EIOPA's advice to make PBS available on a quarterly or semi-annual benefit (instead of yearly). Occupational pensions are not only long-term investments. Especially for DB systems with a rather predictable accrual of pension entitlements, a time lag between two PBS shorter than one year would serve no useful purpose. But also for DC systems where scheme members bear some investment risks, incentives for impetuous decisions to inevitable "ups and downs" could have a detrimental effect on the long-term investment success. In this context, we would also like to reiterate that even well organised processes for creating and distributing PBS always produce measurable costs that ought not to be unnecessarily inflated.
- We feel that a stringent requirement for digitalising PBS (option 2) would at the moment be premature, notwithstanding our belief that a presentation of the information as a part of a solely digital NTS should ultimately replace PBS.
- We feel that in option 3 the term "choice architecture" is vague and is not suitable for the collective

nature of most occupational pension schemes. Given that the IORP II Directive only aims at minimum harmonisation we categorically exclude any act of level-II-regulation to provide further clarifications. In order to facilitate implementation a clear understanding of “choice architecture” should therefore be included in the text of the revised directive itself, if deemed necessary.

• We think that policy option 4 on “synergies between digital format of the PBS and other online communi-cation tools that are in place within the MS” is relevant mostly for the relationship between the IORPs and the instance responsible for a national PTS. It is up to these bodies to determine the technical requirements for making a PBS content digitally available.

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

In our view, a central premise of the current IORP II Directive is still correct, namely that information on cost and charges should be only included in PBS with respect to schemes where members bear investment risk or can actively take investment decisions.

As far as ideas are concerned that EIOPA has expressed in its Opinion from October 2021, we believe that this type of information, if relevant and legally required, should rather be provided to the NCA by the IORPs than to individual scheme members.

Assessments by German IORPs on how to follow up on the Opinion show that the costs of implementing the proposed additional provisions would be very high: Generating, gathering and aggregating the required cost data is very expensive for IORPs or their sponsoring companies / service providers. We would like to emphasise that for IORPs, MiFID-II-requirements are not a suitable point of reference given the specific function of IORPs (providing retirement benefits, often lifelong and / or additional coverage of biometric risks such as death or invalidity). Given that IORPs are often set up by social partners and sponsoring companies and always (by definition) have the sole purpose of providing retirement benefits, the same level of scrutiny is in our view not necessary.

As to the policy options, for the reasons stated above, we prefer option 0 (no change).

Notwithstanding this, should EIOPA decide to propose option 1 to the European Commission we would like to make the following statement:

• Detailed cost information are needed and therefore appropriate where members can take investment decisions. Even in such contexts, EIOPA should bear in mind the risk of misinterpretations and of confusion if cost information is presented in a very granular fashion as well as the costs of providing this type of information.

Q4.7: What are your views on the proposed options regarding projections? Are there additional costs or benefits that have not been identified? Please explain.

We currently see no other elements regarding projections that require a more common basis or additional guid-ance at EU level.

Article 39 of the IORP II Directive allows Member States to give IORPs some discretion in choosing between projection methods based on the specific nature of the pension schemes. Member States have used this opportunity and have, to our knowledge, made sure in implementing the IORP II Directive that the differences between projections can be properly understood (i.e. baseline-scenario, future earnings scenario) by scheme members.

As to the policy options, we do not see that three scenarios are necessary or helpful for scheme members in all cases, especially not in DB systems (that for instance do not need a more favourable scenario).

We currently see no case for changes to Article 39 in ways that would be difficult to implement and produce new costs for IORPs.

As to the policy options, for the reasons mentioned above, we prefer option 0 (no change).

Notwithstanding this, should EIOPA decide to propose a different option to the European Commission, we would like to make the following statements:

- We currently see no need to further develop requirements on the approach to projections (option 1) be-cause this would limit the ability of IORPs to develop the projections that best correspond to their specif-ic features.
- We are also strongly opposed to requiring the use of projections (where applicable) in the information of prospective members and in the pre-retirement phase, not only for cost reasons. In some instances, not all necessary data would be available for making such projections or they would be of little value, especially in a DB context.

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

Currently, we see no need for further detailed guidance on projections at the EU level.

Q4.9: Do you think it is relevant to introduce requirements to ensure the appropriate structuring and implementation of the pension scheme by the IORP? Please explain.

In this question (whose scope goes beyond the structure and content of PBS), EIOPA has chosen MiFID, IDD and PEPP as points of reference for potential new Product Oversight and Governance (POG) requirements.
Our first observation is that none of these afore-mentioned legislatives acts´ objectives are limited to a minimum harmonisation as it is the case for the IORP II Directive.
Therefore, in our opinion, these product standards cannot simply be applied to contractual relationships within an IORP. In the case of IORPs, one has to take into account the triangular contractual relationship between member, IORP and sponsoring employer or social partners that inherently ensures additional oversight in the best interest of members and beneficiaries. Often, IORPs operate on a not-for-profit basis. Many IORPs have been existing for decades and proven not only that they are functioning well but also that they need necessary leeway in order to find own solutions that suit their specific context best, i.e., the established practices between the relevant social partners or a specific branch in which an IORP operates.
Regarding the policy options, for the reasons stated above, we prefer option 0 (no change). We currently see no need to introduce new requirements to provide for the appropriate structuring and implementation of the pen-sion scheme by the IORP.

Q4.10: What types of choices made by the IORP do you think should be captured by the potential requirements on the appropriate structuring and implementation of the pension scheme? Please explain.

From our perspective, no new requirements are needed (for the explanation, please refer to our answer to Q4.9).

Q4.11: Do you think there are other elements that should be addressed by requirements on the appropriate structuring and implementation of the pension scheme besides those set out under option 1 in section 4.6.1? If yes, please explain these other elements.

From our perspective, no new requirements are needed (for the explanation, please refer to our answer to Q4.9).

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

In our view, the introduction of a duty of care of IORPs towards members and beneficiaries is not justified. According to Article 45 of the IORP II Directive, the main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of the IORPs. Member States shall ensure that the competent authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision referred to in paragraph 1. We still consider this notion as appropriate.
Therefore, in the German context, where only limited or no individual choices are possible and/or when only one pension scheme is offered, often based on decisions taken by employers or social partners etc. in the best interest of beneficiaries, we do not see a case for the introduction of duties of care.

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

New requirements that go beyond the existing guiding principles, such as "prudence" or the adherence to the "prudent person rule", should not affect the afore-mentioned IORPs that do not offer relevant choices to their members.

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

	Yes	No
* Section 4.2.1 General evaluation of the functioning of the PBS	○	◉
* Section 4.2.2 Previous EIOPA reports	○	◉
* Section 4.2.3 Relevant legal provisions	○	◉
* Section 4.2.4 Structure and format of the PBS	◉	○
* Section 4.2.5 Information in the PBS on sustainability factors	◉	○
* Section 4.2.6 Other considerations regarding the contents of the PBS	○	◉
* Section 4.3 Digitalisation	○	◉
* Section 4.4 Transparency on costs and charges	○	◉
* Section 4.5 Projections (Information on potential retirement benefits)	○	◉

* Section 4.6.1 Appropriate structuring and implementation of the scheme	○	◉
* Section 4.6.2 Duty of care	○	◉

Please provide your comments on section 4.2.4. Structure and format of the PBS

There are many characteristics of a pension benefit statement beyond DB and DC as “broad” categories that might influence contents and structure of a PBS, e.g., the (non-)coverage of biometric risks such as disability or death.
Generally, we feel that differences in terms of structure and layout between the pension benefit statements from different providers are not an obstacle for an adequate understanding of the mandatory contents of these documents.
That notwithstanding, an important contribution to comparing, aggregating and putting into context the contents of an individual pension benefit statement can be made by the national pension tracking systems.
In sum, we prefer policy option 0 (no change).
Nonetheless, we would amend the proposed changes to Article 38 on pp. 108 as follows:

- In section 1 the addition of the words “shall provide information on the level of risk borne by the member” should be complemented by “where applicable”.
- In section 3 the addition of the words “consistent with the choices made and complete” should be complemented by “where applicable”.
- In section 3 the notion that “the information presented shall be layered and follow principles of good design drawn from behavioural research” will be difficult to implement for information that is provided on paper compared to online resources where layering information is standard practice, if not common place.

Furthermore, the requirement “follow principles of good design drawn from behavioural research” is in our view worded too broad and too vague. It would make an assessment for IORPs to determine whether they are compliant difficult, if not impossible.

Please provide your comments on section 4.2.5. Information in the PBS on sustainability factors

In our view EIOPA´s proposals in Chapter 6 on sustainability would have a material effect on investment data:
Especially the proposal for additions to Art. 39(1) would require even more than merely a shortened version of already existing information from the SFDR.
The wording
"...including a new point in Article 39(1) along the lines of ‘summary information regarding the extent to which sustainable investments, as defined in Article 2(17) of Regulation (EU) 2019/2088 and taxonomy-aligned invest-ments, as defined in Articles 5 and 6 of Regulation (EU) 2020/852 are made by the IORP or, where applicable, whether the investment options selected have sustainable investment as their objective or promote environmental or social characteristics in accordance with Regulation (EU) 2019/2088’."
requires quantitative information on SFDR- and Taxonomy-compliant "sustainable investments" that exceed current obligations.
We are also concerned by the references to Annexes II to V of RTS 2022/1288, which currently only apply to templates for Art. 8 and Art. 9 products.
Contrary to EIOPA’s assumption that implementation costs should be “limited given that the information would be drawn from the content of existing disclosures under SFDR” we fear that considerable costs might result from an implementation of the afore-mentioned proposals.

Chapter 5. Shift from Defined Benefit to Defined Contributions

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

With this proposal, EIOPA apparently wants to embed its “Opinion on the supervision of long-term risk assess-ment by IORPs providing defined contribution schemes” of October 2021 into the IORP II.
As in our position paper on this Opinion, we emphasize that double regulation, i.e. some pension schemes being considered both DB and DC and consequently subject to regulation for both, has to be avoided under all circum-stances. We cannot stress this enough, especially in light of EIOPA´s statement that “the traditional difference between DB and DC has increasingly become blurred” (p. 145). However, we feel that with the table in Annex 4, EIOPA contributes to this blurring, especially because of the concepts of “[u] nprotected” and “[p]rotected DC pensions” schemes. We believe that in order to have a clear-cut distinction between DB and DC, EIOPA should stick to definition provided on p. 145: “Occupational DC schemes can be understood to be occupational pension plans under which the plan sponsor pays fixed contributions and has no legal or constructive obligation to pay further contributions to an ongoing plan in the event of unfavourable plan experience.”
It has to remain the respective MS who, via the national labour law, ultimately decides whether a scheme is to be considered DB or DC.
We believe that there are better mechanisms to establish the risk tolerance of members and beneficiaries than simply asking them. We hold that the internal organization of IORPs operating a DC scheme has to be taken into account, should those IORPs be required to establish the risk tolerance of their members and beneficiaries. In German collective schemes, social partners or employee and employer representatives, often supported by consultants, are, in the respective committees of an IORP, involved in the decisions on risk tolerance and based on this, the investment strategy. This also applies to our only pure DC scheme (“Sozialpartnermodell” / “social partner model”).
Should the requirement to enact a long-term risk assessment be introduced into the IORP II, this needs to happen in a way that takes into account the heterogeneity of IORPs in the EU. Hence, the approach to establish the risk tolerance of members and beneficiaries via an IORP´s committees consequently has to be acknowledged. Metaphorically speaking, those committees operate as institutions of representative democracy: Just like in a representative democracy, decisions are not taken directly by the people (in this case, the parties involved in an IORP), but by their elected representatives who have a certain degree of expertise. We believe that this approach is more purposeful, especially since it guarantees that the risk tolerance of members and beneficiaries is not directly translated into an IORP´s investment strategy: The prudent person rule should always have to be prioritized over the risk preferences of single members and beneficiaries.
EIOPA´s idea that “[i]n instances where individual choice is offered to members based on data collected on an individual basis unique to the member, the member’s choice can take precedent over a collective IORP wide choice based on the established risk tolerance of the collective IORP membership” is simply not practicable – and in our opinion also not desirable – in collective occupational pension schemes.
All in all, option 1 seems appropriate to us, as DC does not mean “don’t care”. However, as stated above, we stress that such a stipulation, according to the general approach of the IORP II, has to be principle-based in order to leave leeway to MS and NCAs to choose approaches that are sensible in the national context.
More specifically, we ask EIOPA to implement paragraph 2.6 of its above-mentioned opinion: “This Opinion rec-ognises the heterogeneity in occupational DC schemes across Europe. DC schemes feature different risk-mitigation techniques in the accumulation phase and designs of the pay-out phase. DC schemes also differ in respect of the choice they offer. Some DC schemes offer plan members a range of investment options to choose from in accordance with certain retirement needs and risk preferences. Others take a more collective approach, often with an important role for social partners in the design of the scheme and its investment policy“. Hence, where members and beneficiaries are involved in an IORP´s governance, individual queries of members and beneficiaries should not be necessary.
With regard to option 2, it should be kept in mind that some of the principles proposed by EIOPA would cause significant additional costs which ultimately would have to be borne by members and beneficiaries in the form of lower pensions. In particular the mandatory introduction of stochastic scenarios would by costly,

as according scenarios would have to be bought from externals and require further capacities to calculate, evaluate and interpret the results. Hence, option 2 does not seem to be an appropriate solution.

Q5.2: What do stakeholders think about the relevance of long-term risk assessments in the case of IORPs where members can select their investments?

See our answer to Q5.1.

Q5.3: What are, in your view, the advantages or disadvantages of DC IORPs reporting on an annual basis information on all costs and charges to its members and beneficiaries?

There seems to be a mismatch between EIOPA´s advice on p. 161, which is on supervisory reporting on costs and charges, and the subsequent question Q5.3, which is concerned with the disclosure of such information to mem-bers and beneficiaries. Our answer primarily focuses on the advice, i.e. EIOPA´s proposal to require DC IORPs to report on an annual basis information on all costs and charges according to principles, with definitions and templates set out in EIOPA´s Opinion on the supervisory reporting of costs and charges for IORPs.
Until now, EIOPA has provided no evidence of an EU-wide cost problem of IORPs. On the contrary, EIOPA´s “Costs and Past Performance 2023” report shows that in the majority of Member States, the expense ratio of DC IORPs is below 1%. Even if respective challenges may exist in some Member States, we see no reason to adapt the IORP II Directive. In line with the principle of subsidiarity and the IORP II´s character a minimum harmoniza-tion directive, according solutions should be found by the concerned Member States (and their NCAs) themselves.
Moreover, solely focusing on costs without taking into account benefits presents an incomplete picture. A DC IORP that invests also in private equity and other alternative investments probably has higher operational costs than one that is not investing in these asset classes – but is also more likely to incur higher capital yields and thus justifies a higher level of costs to provide for theses yields. Hence, focusing on costs without assessing benefits is likely to lead to a race to the bottom, which is not in the best interest of members and beneficiaries.
Finally, we would like to point out that many IORPs, whether DB or DC, operate on a not-for-profit basis and in-volve or are set up by the social partners or sponsoring companies, which means that members and beneficiaries are represented in decision-making. Hence, other than many financial institutions, most IORPs do not have an interest in artificially raising costs in order to increase their profits. Applying requirements developed for profit-oriented companies in frameworks such as MiFID II or PEPP to IORPs is therefore inadequate. Introducing new reporting requirements is always associated with new additional costs for IORPs, which means that such an approach could actually have the opposite effect than intended.
With regard to the disclosure of information of costs and charges to members and beneficiaries, we believe that total costs have to be transparent if the members and beneficiaries are bearing those costs themselves. However, as any information to members and beneficiaries should be easily understandable, we think that such disclosures should only include information on the total costs, i.e. without a detailed differentiation of those costs. No such disclosures should be mandatory in cases where costs are borne by the employer(s), as in those cases, they do not affect the benefits that will eventually be paid out.

Q5.4: What are, in your view, the advantages or disadvantages of NCAs providing a high-level overview of their risk assessment framework, to be included as part of the requirements in Article 51(2), as public information available to their supervised IORPs?

We believe that prior to focusing on the advantages and disadvantages of requiring NCAs to provide a high-level overview of their risk assessment framework, EIOPA should clearly define the problem which it intends to solve with this proposal or other reasonable benefits of the inclusion of such a provision. Based on the analysis of chapter 5.5.4., no such problem or additional benefit was discernable to us.
We especially see no benefits for members and beneficiaries, as in our experience, they prefer clear, comprehen-sible and concise information on their pensions. Complex mathematical models would most likely overwhelm them.
If EIOPA´s ultimate goal is to harmonise the risk assessment frameworks of the NCAs, we oppose this proposal. Given the IORP landscape in the EU, which is very heterogenous for good reasons (mainly differences in national social, labour and tax law), any harmonisation at European level would create more problems than it would solve. If despite our concerns, any such harmonisation should take place, the according minimum standards would have to be abstract and principle-based so that they can be adapted in a sensible manner at Member State level. Under no circumstances should EIOPA predefine specific formulae, spreadsheets etc.

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

	Yes	No
* Section 5.2: Europe and European Pensions Markets are shifting	◉	○
* Section 5.3: Background information on Defined Contributions	◉	○
* Section 5.4: Previous EIOPA Reports	○	◉
* Section 5.5: Policy options to address the shift to DC	◉	○
* Section 5.5.1: Long-term risk assessment	○	◉
* Section 5.5.2: Supervisory reporting on costs and charges	○	◉
* Section 5.5.3: Complaints procedure and Alternative Dispute Resolution (ADR)	◉	○
* Section 5.5.4: Article 51.2 - Increased transparency of National Competent Authorities – Risk assessment framework	○	◉
* Section 5.5.5: Financial education	◉	○
* Section 5.5.6: Member and/or beneficiary involvement in IORPs governance	◉	○
* Section 5.5.7: Fit and proper requirements	◉	○

Please provide your comments on section 5.2 Europe and European Pensions Markets are shifting

We agree with EIOPA that the development towards more DC across the EU should be adequately complemented by the legislator and the supervisory authorities. However, EIOPA seems to focus one-sidedly on individual DC schemes without taking into account that in many Member States, e. g. Germany and the Netherlands, the vast majority (if not all) DC schemes actually follow a collective approach. Linguistically, we consider the term “product” to be inappropriate with respect to occupation pension schemes, irrespectively of whether they are DB, DC or hybrid: IORPs do not operate in a "retail

environment": employees are, depending on the Member State and the employment contract, either automatically / compulsorily enrolled in an occupational pension scheme or left with the decision of taking or leaving it. They cannot simply switch their occupational pension scheme if they are unhappy with their current one.

Please provide your comments on section 5.3 Background information on Defined Contributions

Looking at "Risk for DC Savers" (chapter 5.3.4.; p. 146) there is a "retirement income risk", but no disability and death risks in the accumulation phase. We consider disability and survivor protection important - also for DC schemes. We ask EIOPA to take these risks into account.

Please provide your comments on section 5.5 Policy options to address the shit to DC

We agree with EIOPA's statement “The shift from DB to DC schemes in most MS will result in a shift of risk to members resulting in a reduction in the level of protection in occupational pension systems.” (p. 150) However, we see this development less as a "challenge for supervisors to protect savers managing a greater risk" but also as a challenge for the Member States to set up good frameworks (with consistent labour, social, tax and pruden-tial rules) for this shift. We believe that the DC approach focusing on collective schemes like in the Netherlands and Germany is a good way to go. It is better to avoid many problems of individual approaches than to combat them with additional prudential requirements. Therefore, we recommend examining recent DC experiences and developments in the UK more closely.

Please provide your comments on section 5.5.3 Complaints procedure and Alternative Dispute Resolution (ADR)

Generally, we believe that it would be sensible for IORPs to have an ADR procedure in place. However, we would like to once again stress that the mere transposition of regulation aimed at “regular” financial market products and third pillar pension products is in many cases inadequate for IORPs, mainly due to the triangular relationship between employee, employer and the IORP that is absent on the public market for financial products.
Hence, any according amendment of the IORP II will have to take into account the heterogeneity of IORPs within the EU and consequently, be principle-based. Member States / NCAs need sufficient leeway to adopt regulation that fits the respective national context. As pointed out by EIOPA, a number of Member States already have some form of a national requirement for a complaints procedure in place. For example, the German NCA has a con-sumer protections unit and IORPs are required to have a complaints management function in place that reports to said unit. Any according amendments to the directive may in no way lead to parallel structures in Member States in which a complaints / ADR procedure is already mandatory.

Please provide your comments on section 5.5.5 Financial education

We agree with EIOPA on the importance of financial education of the general public.
However, due to capacity reasons, we think that neither NCAs nor IORPs should be given an educational mission. The task of IORPs should be to have good decision-making processes in place. The representatives in the committee are involved in far-reaching decisions and have to fulfil the fit and proper requirements, not the individual members and beneficiaries of an IORP.
Hence, we believe that when it comes to the role of social partners, sponsoring companies and IORPs, the

focus should rather be on providing financial orientation to their members and beneficiaries. Therefore, we are in favour of collective systems.

Please provide your comments on section 5.5.6 Member and/or beneficiary involvement in IORPs governance

We welcome that in this section, EIOPA recognizes the diversity among IORPs within the EU, especially regarding their governance structure. We believe that collective systems with institutionalized involvement of members and beneficiaries in IORPs´ committees, as they are common in Germany, already provide for sufficient opportunities for these groups to participate in the institution´s decision-making (see also our answer to Q5.1, in particular with regard to the reference to representative democracy). Furthermore, due to demographic change, a number of German IORPs have found ways to increasingly involve beneficiaries in particular.
As pointed out by EIOPA, any according provisions that might potentially be included in the IORP II have to re-spect the traditions of the individual Member States and consequently be strictly principle-based and leave suffi-cient leeway at Member State level in order to not disturb established local governance structures and processes.
We generally support the notion of the institutionalized involvement of members and beneficiaries in the deci-sion-making of IORPs – however, due to practical reasons (members and beneficiaries are affected by an IORPs decision on a daily basis), this involvement should be limited to material consequences.

Please provide your comments on section 5.5.7 Fit and proper requirements

Even though DB and DC are not directly mentioned in Article 22 in its current form, we believe that it is sufficiently clear that the fitness requirements are always and have always had to be interpreted in the light of the characteristics of the respective IORP in question. Our NCA has confirmed this. Moreover, based on discussions with our European partner organizations, we know that also in Member Stats with a longer tradition of DC schemes than Germany, the article in question (as well as the entire directive) has always provided adequate and comprehensive rules for both DB and DC schemes. We therefore do not see the need in amending this article, as this would ultimately have no practical impact other than leading to additional reporting requirements for IORPs.

Chapter 6. Sustainability

Q6.1: What are your views on the consideration of sustainability risks in the recommended requirements, in particular, on how they should be applied in a proportionate manner?

We strongly regret EIOPA´s approach of simply proposing the transfer of the SII Delegated Regulation to IORPs without analyzing which regulations would actually make sense for IORPs and how they could be imple-mented. The insurance sector has very different structures and sizes than the IORP sector which is characterized by great diversity – e. g. many IORPs, not only in DE, have fewer than 20 employees. A transfer of the SII Delegated Regulation to IORPs also would suggest that EIOPA and the NCAs apply Level III requirements developed for the insurance industry to IORPs and are thus overburdening most of them. Hence, the transfer of the EU fully harmonized insurance regulation to IORPs is inappropriate and strictly rejected by us.
We believe that before issuing concrete policy recommendations, EIOPA should answer the following questions:
• Given the diversity of IORPs, where is the flexibility needed at national level? Where do IORPs – also as a result of the different set-ups – need flexibility in implementation? We believe that at least the

proportionality principle including size and internal organization should be included.

- How can it be taken into account that in several MS, IORPs invest fully or partly through AIFs and UCITS?
- Where are overlaps and inconsistencies with SFDR requirements? Especially: How can it be avoided that in the future, IORPs have to report under Art. 8 or 9 SFDR, which entail additional requirements that are simply not fulfillable for most IORPs (see our comments on section 6.4)?

We agree with EIOPA´s statement that "the concept of double materiality in IORPs' investment decisions should be considered in a cost-effective way for IORPs with lower resources" (p. 176). Unfortunately, however, a reference to this statement is missing in EIOPA´s advice on this chapter. Furthermore, we see an additional burden resulting from the overlap between the SFDR and EIOPA´s proposals: The integration of double materiality as part of the prudent person rule as proposed by EIOPA would cause that IORPs would no longer be able to report under Art. 6 SFDR, but only under Art. 8 or 9.

Regarding a remuneration policy that takes into account how sustainability risks are integrated in the risk man-agement system similar to the SII Delegated Regulation, on p. 176, EIOPA states that the specificities of IORPs have to be reckoned. Unfortunately, the further explanations do not address these specificities, nor are they taken up later in the proposal. (German IORPs often have only one pension scheme and - in contrast to the asset management industry - cannot set up a new light or dark green financial product. IORPs have a long-term collective investment that is intended to become "sustainable" over many years. Their investment portfolio is often complex and diversified and for many assets the data required for classification is missing. IORPs are regularly not in a competitive situation and thus have no reason to engage in greenwashing. Reputational risks for IORPs become relevant if high ESG ratios cannot be reported due to structural reasons and insufficient data.)

Regarding EIOPA's proposals to expand ORA on climate scenarios from a risk perspective, we fear the familiar pattern of requirements and concretizations developed under SII then being used (marginally adapted) for IORPs. We refer to the EIOPA Opinion of April 2021 and the supplementary EIOPA Guidances of August 2022, which will presumably be the godfather for the future concretization of the proposed amendments via EIOPA Opinions. The content for the application on the investment side of IORPs is understandable in itself, including the orientation towards scenarios of the Network for Greening the Financial System (NGFS). However, we consider such requirements to be very burdensome and hardly implementable for many IORPs without further assistance and service providers. How and whether this is feasible for IORPs is doubtful - especially also if one takes seriously into account the basic issue that climate risks materialize slowly over time and are therefore also best assessed in long-term cash flow analyses. Modelling climate stress as a sudden transition scenario with a shock, such as in the NGFS "Delayed Transition" scenario, to analyse capital investment under stressed conditions is of limited use. We fear that the SII developments regarding the ORSA, which also pose major challenges for insurers, are now to be rolled out to IORPs.

IORPs that disclose PAI should adapt their processes, systems and internal controls to this disclosure. Some IORPs already foresee to address the issue of ESG first by including this topic in the risk strategy, but also through appropriate controls (e.g. review of the planned reduction of CO2 emissions). Generally, we hold that this proposal would require IORPs to change their statutes focusing on organizing occupational pensions in order to meet their new targets with regard to sustainability.

Q6.2: What are your views on the interaction between sustainability preferences of members and beneficiaries, and the requirement for IORPs to take into consideration the sustainability factors in investment decision-making (current Article 19(1)(b))?

We welcome EIOPA´s acknowledgement that the requirements laid out in Solvency II and the IDD requiring insurance companies to take their clients sustainability preferences into account cannot be applied to IORPs. We agree that clear distinctions need to be made with regard to the specificities of IORPs, in particular with regard to their governance structure and their investment approach (p. 182). We believe that Policy Option 1,

as it is proposed by EIOPA, only makes sense in contexts where the social partners are not represented in the management and/or supervisory bodies of an IORP and the IORP does pursue a collective investment approach.
A “one-size-fits-all” approach for IORPs to consider the sustainability preferences of their members and benefi-ciaries is therefore inadequate. However, Option 1 and EIOPA´s concrete advice (6.6.3.) do not reflect this. We ask EIOPA to respect the collective nature of many pension schemes, in which members do not make individual investment decisions and where their interests are represented in the supervisory board of an IORP in an ade-quate way (usually via trade unions or other employee representatives). It is truly decisive from a cost and opera-tional perspective that IORPs can continue to have a single collective investment policy. We firmly believe that institutionalized committees, where all parties involved in an IORP are represented and which are able to consult external experts on certain investment questions, are better equipped to take sustainability factors in investment decisions into account than individual members and beneficiaries.
In these cases, we don’t see the need for technology-based solutions to gather individual sustainability prefer-ences of members and beneficiaries. Improving financial literacy takes decades. In Germany, we believe that collective approaches for occupational pensions and financial guidance are the better way forward. We would like to further draw attention to the fact that in DB and hybrid schemes, which at least in Germany will remain domi-nant in the foreseeable future, the employer is liable if the IORP cannot provide beneficiaries with the promised pension level. Hence, IORPs that have to accommodate the sustainability preferences of their members and ben-eficiaries – potentially to the detriment of the pension level or the risk /return ratio – present a considerable financial risk for employers. An orientation solely on the interests of the beneficiaries in these schemes is not appropriate. If, in spite of our concerns, EIOPA´s proposal is adopted into the IORP II, solutions for schemes in which employers bear investment risks need to be found.
Regarding EIOPA´s statement that “EIOPA can issue guidelines to address the issues that IORPs encounter in dif-ferent cases depending on the type of schemes or any other specificity” (p. 184), we point out that the IORP II Directive is an EU minimum harmonization directive and that we strictly reject EIOPA guidelines that are supposed to contribute to EU full harmonization. At best, opinions that give NCA flexibility in implementation are possible and acceptable.
We believe that Article 19(1)(b) in its current form already provides sufficient leeway for IORPs to take into ac-count the sustainability preferences of their members and beneficiaries and therefore do not see the need to change it. To us, a consolidation or aggregation of thousands of individual views seems to be not only technically immensely complex and expensive and therefore to be rejected, but also simply superfluous in terms of content for collectively organized IORPs with representative bodies. If further specification is deemed necessary at all to take into account the preferences of members, we argue that instead of the consultation of members, the exist-ing governance and representation structure should be referred to in Art. 19.

Q6.3: What are your views on how sustainability considerations should interact with other investment objectives of the prudent person rule (Article 19(1)(a)(c))?

In order to meet their responsibility towards members, beneficiaries and sponsors, IORPs have always been subject to the principles of security, profitability and liquidity. Thus, in their decision-making processes, they consider the long-term risk-return aspects associated with their investments as thoroughly as possible. Not least because of their long-term obligations, IORPs have a natural interest in managing their investment risks over the long term. Hence, sustainability considerations have always been integral components of security and rentability. Due to the fact that sustainability risks are embedded in the IORP II in its current form, they are at minimum implicitly integrated into the prudent person principle already.
Members, beneficiaries and sponsors, who are now and/or have been contributing to their occupational pension scheme for a long time, rightly expect the highest possible pension in line with the social purpose of the pension scheme. This expectation must not be thwarted by new regulation.

We therefore hold that the interests of the members and beneficiaries have to remain the priority in investment decisions. If double materiality is included in the IORP II, IORPs must at least be left with a possibility to establish a hierarchy between the objectives. This means, e.g., that if the risk/return options are equivalent, the more sustainable option should be preferred. On the other hand, however, the sustainability objective should not worsen the risk/return profile.
The interests of the members and beneficiaries should not be dominated by an abstract interest of present and future generations. Therefore, we disagree with the EIOPA statement on the integration of sustainability (p. 180: „… Comparing benefits and costs, it is true there will be costs but it is also true that the benefits outweigh those costs in the long-term. These changes will benefit not only the current society but also all the upcoming future generations.“): Interests of members and beneficiaries and of sponsoring companies which possibly have to step in for given pension promises matter both today and in the future. Hence, costs matter in the short, medium and long term and appropriate regulation is important.
Depending on the understanding of the principle of "double materiality", particularly the mandatory consideration of negative impacts on sustainability factors in investment decisions, the proposal would imply an enormous expansion of IORPs´ obligations. Without further concretisation, it would result in far-reaching interpretation requirements that represent uncertainty for the IORPs and, if necessary, would have to be filled in conceptually at great expense (e.g.: What are the specific impacts to be taken into account? Is the respective implementation sufficient to fulfil the principle?). Alternatively, very concrete Level II or III requirements, which will no longer allow IORPs to design their own concepts and will generate considerable implementation effort, would have to be formulated.
The essential question is: What is concretely to be understood by the consideration of negative sustainability impacts: Given the existing investment portfolios of IORPs (globally diversified, very many investments across different asset classes, held directly or via investment funds), we clearly advocate that it is impossible to demand particularly "sharp" standards for all investments here (e.g. only SFDR or taxonomy-compliant invest-ments/activities). "Double materiality" must not only include particularly sustainable investments, but also the principle-based integration of sustainability aspects with a view to the "inside-out perspective" as ONE dimension. This is especially important regarding the fact that existing portfolios consist of a very large number of invest-ment stocks (often more than 10,000 via funds, etc.) and are very broadly diversified. The perspective must be to make these assets gradually more sustainable in the medium to LONGER TERM. This also has to be understood in the light of "double materiality" in investment decisions, in order to be able to continue to diversify IORPs´ capital investment broadly.
Thus, "double materiality" can only be a principle-based requirement in the sense of a sound basic test of "minimum standards", i.e. basic exclusions to be self-determined. However, it also has to be pointed out that a "Do No Significant Harm" test at the DNSH level of the SFDR or the Taxonomy Regulation also represents a considerable effort (in terms of data, process etc.), even if the permitted level would go somewhat further.
In this context, we would like to again point out to overlaps between the SFDR and EIOPA´s proposals: The integration of double materiality as part of the prudent person rule as proposed by EIOPA would cause that IORPs would no longer be able to report under Art. 6 SFDR, but only under Art. 8 or 9, whose stricter stipulations are simply not fulfillable for many IORPs.

Q6.4: What are your views on the consideration of stewardship to address sustainability risks, in particular, on how it should be applied in a proportionate manner?

Appropriate regulation should take into account how IORPs actually invest. In Germany, for example, IORPs are typically not directly invested in companies, as they predominantly invest in AIF and UCITS - hence, they are structurally not in a position to apply stewardship approaches.
Irrespective of this, in order to implement stewardship, IORPs would need a deep understanding and expertise of individual companies and their business models in their portfolio in order to make right decisions. Given the highly diversified portfolio of IORPs and their typical small size, this would require IORPs to resort to outsourcing, in-creasing their costs and ultimately resulting in lower pensions being paid

out.
The organisation of the investment of IORPs is essential with regard to the stewardship discussion: The requirements for indirect and direct investments with regard to stewardship requirements for IORPs must differ in their intensity or interpretation: In the case of indirect investments, the IORP does not select securities or individual companies, but regularly selects the respective asset manager and its investment style etc. Therefore, structurally and effectively, the respective IORP has less knowledge about the target companies for reasons of division of labour/delegation to specialized investment managers. This is a consequence of the organisational implementation of institutional investment. Consequently, the specific requirements need to be related to how 'close' an investor is. For example, the consideration of stewardship could be related to manager selection in the case of indirect investment and to the companies themselves in the case of direct investment. In addition, the complexity and costs resulting from the commissioning of service providers / proxy voting should be pointed out, as well as the fact that mandatory stewardship often leads to a content-related alignment with these service providers and not necessarily to a serious engagement with the companies themselves.
We believe that for indirect investments, the right (effective and efficient) approach for IORPs is their arrangement with the asset managers, as it is also reflected in Art. 3h of the Shareholder Rights Directive.

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

	Yes	No
* Section 6.2: Relevant provisions in IORP II Directive and other regulations	○	◉
* Section 6.3: Previous EIOPA reports	○	◉
* Section 6.4: Other regulatory background	◉	○
* Section 6.5: The integration of sustainability factors in investment decisions	○	◉
* Section 6.6: The fiduciary duties	◉	○
* Section 6.7: Stewardship	○	◉
* Section 6.8: Broader societal goals	◉	○

Please provide your comments on section 6.4 Other regulatory background

With respect to the issue of information on sustainability aspects (see also Chapter 4.2.5 on the PBS – Q4.2: Do you agree to introduce summary information in the pension benefit statement relating to any sustainable invest-ments?), we also want to stress the following relevant aspect here in the central Chapter 6 on sustainability, be-cause it causes material efforts on investment data:
With regard to the extension of the PBS to include sustainability information, we would like to point out that the additions to Art. 39(1) proposed by EIOPA are not just an abridged version of already existing information from the SFDR. EIOPA's specific proposal to expand Art. 39(1) provides for "...including a new point in Article 39(1) along the lines of 'summary information regarding the extent to which sustainable investments, as defined in Arti-cle 2(17) of Regulation (EU) 2019/2088 and taxonomy-aligned investments, as defined in Articles 5 and 6 of Regu-lation (EU) 2020/852 are made by the IORP or, where applicable, whether the investment options selected have sustainable investment as their objective or promote environmental or social characteristics in accordance with Regulation (EU) 2019/2088'."
The quantitative information on SFDR- and Taxonomy-compliant "sustainable investments" (so-called alignment ratios) mentioned here represent a significant extension of requirements for all (not only sustainable) occupational pension schemes, which go significantly beyond the existing requirements of the SFDR and the Taxonomy Regulation. In addition, EIOPA points out that the disclosed information should be

consistent with Annexes II to V of RTS 2022/1288, which, however, currently only provide templates for Art. 8 and Art. 9 products, but not for "conventional" products.
Thus, IORP would require elaborate data to be collected for all directly and indirectly held investments, which is currently only required for specific "sustainable" products under the SFDR and the Taxonomy Regulation. In this respect, we consider some statements by EIOPA, according to which these are only summaries of existing information, as misleading ("Costs to implement additional disclosure. However, this should be limited given that the information would be drawn from the content of existing disclosures under SFDR.", p. 114).

Please provide your comments on section 6.6 The fiduciary duties

We believe that sustainability in all three aspects of environment, social affairs and governance is an essential component for the long-term viable fulfillment of the task of IORPs. The purpose of the IORPs – the provision of occupational pension benefits – contributes to the prevention of old-age poverty and is geared toward social sustainability. The regulatory requirements must therefore be in a reasonable cost-benefit ratio and should not overburden smaller institutions.
The interests of all IORP stakeholders must remain in focus when creating sustainability requirements: The pur-pose of IORPs is to provide retirement benefits. In most Member States, beneficiaries rely on this additional in-come in old age. In view of the demographic development, the expansion of collective IORPs is more important than ever. We agree that a transformation of the real economy has to take place, but this goal is primarily to be achieved via cooperation with the companies themselves (i.e. the real economy), especially those that are traditionally CO2-intensive.

Please provide your comments on section 6.8 Broader societal goals

EIOPA correctly identifies the gender pension gap as a major social policy challenge. However, as stated by EIOPA itself, answers for lessening the gender pension gap often lie in policy areas that are outside of its mandate.
Pension policy should be driven by the Member States. Within the EU Commission, DG EMPL is best placed to work on pension issues from a social perspective. Furthermore, pension policy requires a consistent framework of labour and social law as well as tax and prudential law. The role of IORPs depends on the pension policy of the individual Member State.
Generally speaking, the gender pension gap (not only with regard to occupational pensions) is not mainly a reflection of inadequate pension policy, but of women often not being able to participate on the labour market to the same extent as men, e. g. because in most families, they carry out a much larger share of unpaid care work than men – and consequently accumulate lower pension entitlements over time. Hence, in our view, the gender pen-sion gap cannot primarily be solved by pension policy. Rather, the key to solving the gender pension gap lies primarily in labour market policy as well as the creation of a social infrastructure that enables women to increase their participation in the labour market. It is up to the Member States to find corresponding solutions that fit their respective national context.
That being said, German pension law contains various elements that benefit primarily women and consequently at least help to reduce the gender pension gap to some extent. These include inter alia:
- First pillar: Predominantly tax-financed entitlements for childcare, which per child correspond to the pen-sion entitlement of a person that has worked for the average wage for three years.
- Second pillar: Tax-subsidies for employer-financed occupational pensions of low-income earners; flexibil-ity of the tax framework for employee-financed occupational pension schemes, so that occupational pension entitlements can also be acquired for periods without earnings.

Chapter 7. Diversity and Inclusion (D&I)

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

IORPs primarily have a social purpose, which is to provide their beneficiaries with an adequate supplementary retirement income. In order to achieve this goal, IORPs´ management bodies have to take responsible and far-reaching decisions in an increasingly complicated environment (inflation, energy crisis, changing interest envi-ronment etc.). aba therefore supports the “fit and proper” requirements laid out in Article 22 of the IORP II, as they ensure that the people who effectively run an IORP are actually capable of doing so from a professional point of view.

In addition, we believe that the management and supervisory boards of IORPs should reflect their respective members, beneficiaries and sponsor(s) rather than society at large. This is usually achieved by having representatives of them running an IORP. Generally, the fact that in many IORPs, the management and/or supervi-sory bodies are composed of representatives of employers and employees already represents an important aspect of diversity that is absent in financial institutions. Simply transferring regulation on diversity and inclu-sion that was designed for the banking sector to IORPs is therefore not adequate.

We fear that the inclusion of quantitative diversity and inclusion requirements with regard to the composition of IORPs´ management bodies in the IORP II would dilute the “fit and proper” requirements, ultimately leading to suboptimal outcomes for the sponsoring undertakings and the members and beneficiaries. As a maximum, issues related to diversity and inclusion should be considered secondary to “fit and proper” requirements, i. e. they should only influence the decision on a management board´s composition if the choice is between two or more equally qualified persons.

Should the requirement to put in place a policy that promotes diversity and inclusion in the management bodies of IORPs be included in the IORP II, the application of this policy in a proportionate manner is essential. We therefore welcome that EIOPA acknowledges both the role of social partners in the management of IORPs as well as the fact that management and supervisory bodies of IORPs are often very small – in Germany, it is common that the board of an IORP has only two members. Given the importance of the social partners in the management of IORPs in Germany, we believe that if it all, the target of increasing the number of the un-derrepresented gender is to be achieved in a manner that is proportionate not only to the nature, scale and complexity of the activities of an IORP, but also to its size and internal organization (see also answer to Q2.3).

We are opposed to introducing a requirement for IORPs to formulate quantitative targets for the underrepresented gender in their management bodies. Given the above-mentioned predominantly small size of the man-agement bodies of German IORPs and the prioritization of the “fit and proper” requirements, it is simply not realistic to assume that such targets could be met by a majority of German IORPs. Neither is the “comply or explain” approach, that according to EIOPA may be applied where proportionate, a satisfactory solution, since the regular reporting on failing such targets would not only increase the already high reporting / disclosure burden of IORPs, but also entail great reputational risks for them.

Regarding EIOPA´s Advice of amending Articles 6 and 23(3) of the IORP II to include an obligation for IORPs to pursue a “gender-neutral remuneration policy”, we would like to point out that the principle of “equal pay for equal work” is already enshrined in EU primary law (Art. 157 TFEU) and therefore legally binding in all Member States. Hence, we do not see the need of doubling this principle in secondary legislation such as the IORP II.

Q7.2: What are your views on a definition of diversity and inclusion at the European level? Which definition would you suggest? In particular, which diversity criteria should it include?

We wonder whether it is a sensible approach to develop an EU-level definition of diversity and inclusion that only applies to the financial sector. In order to avoid potentially conflicting regulation between different sectors, we believe that such a definition should best be developed in the realm of EU company law and hence be applicable to all undertakings irrespective of the branch of the economy that they are active in.

That being said, we stress that in any EU-definition of diversity and inclusion, possible conflicts with national la-bour law of the Member States have to be avoided. Hence, we believe that the definition of “diversity” should be limited to information that is typically already available in a professional context, e. g. age, sex, professional background and geographical provenance / nationality. However, we believe that employers should not have to ask candidates about personal information such as their sexual orientation, gender identity or cultural back-ground, nor should candidates have to provide information on these issues to (potential) employers.

Q7.3: What are your views on the public disclosure in the annual report of the representation target for the underrepresented gender in the management or supervisory body and the policy on how to increase the number of the underrepresented gender in the management body and its implementation?

Given the increase in reporting and disclosure requirements during the past years, we are generally critical of this proposal.
We can accept EIOPA´s advice to require IORPs to report their policy promoting diversity and inclusion on the management or supervisory bodies to the NCA, as long as this can be realized together with the reporting on the “fit and proper” requirements.
However, obliging IORPs to publicly disclose their target for the representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender and its implementation in their respective annual report would be overly burdensome and entail no significant added value for the target audience.
As stated in our answer to Q7.1, we are generally opposed to a requirement for IORPs to formulate quantitative targets for the underrepresented gender in their management bodies: The management bodies of the vast majority of (not only) German IORPs are small, many are composed of only two members. For those IORPs, formulating a quantitative target for the underrepresented gender would effectively mean a requirement to have a paritarian board in this regard. Furthermore, it is already difficult to find candidates who fulfil the “fit and proper” require-ments, which we support and which, in our opinion, always have to be prioritized. Adding quantitative targets with regard to gender would complicate matters even more. We believe that formulating targets that structurally cannot be met by a majority of IORPs and then publicly disclosing the failure to meet those would signify great reputational problems for IORPs without adding any benefits.
We therefore think that disclosure of information on diversity and inclusion in the management and supervisory bodies should not have to be made available to the general public, but rather be limited to an IORP´s stakeholders.

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

	Yes	No
* Section 7.2: Relevant legal provisions	○	◉
* Section 7.3: Previous EIOPA reports	○	◉
* Section 7.4: Some national practices	◉	○
* Section 7.5: D&I in management bodies	○	◉
* Section 7.6: Reporting on D&I	○	◉

Please provide your comments on section 7.4 Some national practices

Since 2015, German company law requires that supervisory boards of companies that are stock-listed and /or are subject to codetermination (>500 employees) include at least 30% women and 30% men. In other words, the German legislator has deliberately decided to exclude companies employing less than 500 people from such requirements. German IORPs are not stock-listed, so the law only applies to them if they have over 500 employees.
The introduction of stricter requirements or lower thresholds specifically for IORPs via EU supervisory law would be at odds with the principles of subsidiarity and proportionality.

Annexes

* Do you have any comments on the annexes?

- (●) Yes
- ( ) No

Please provide your comments on the annexes

Annex 1 provides interesting information on IORPs across the European Economic Area. This approach should be built upon. We hold that EIOPA should use the data it gathers from these institutions to develop a stand-alone report on IORPs that is published on a yearly basis – similar to EIOPA´s annually published "European Insurance Overview". This would significantly deepen the useful insights that are gained from already existing publications that dedicate singular sections to IORPs such as the "Consumer Trends Report" or the report on "Costs and Past Performance" – especially since there are discussions to merge both of these publications.
In December 2021, EIOPA published a report that dedicated itself exclusively to cross-border IORPs. However, given the limited significance of cross-border IORPs in the EU, which is also reflected in the present Consulta-tion Paper, we believe that a "general" report focusing exclusively on IORPs would be more useful.

Any other comments

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

- (●) Yes
- ( ) No

Please provide your other comments on the consultation paper

In addition to the IORP II, horizontal legislation for the entire financial sector (e. g. sustainable finance, DORA) plays an increasing role for IORPs. This increasing amount of cross-sector legislation has led to an overburdening of all German IORPs, also the larger ones.
We acknowledge the reasons for cross-sectoral financial market regulation:

- consistent regulation across sectors as an objective and
- efficiency from European Commission´s and ESA´s perspective.

However, we ask to include this "new" EU regulation in the discussion of the IORP II-review, as the cross-sectoral financial market regulation causes fundamental problems for IORPs:

- regulation created for large financial institutions overwhelms most IORPs, which are rather small compared to most other financial market actors,
- a lack of proportionality for IORPs in cross-sectoral financial market regulation,

- very detailed level II and level III regulation that leaves almost no flexibility with regard to the implementation at national level,
- unfitting regulation (e. g. we see very little danger of IORPs engaging in greenwashing, as they do not compete with financial institutions for “clients” and usually have only one pension scheme – why are they subject to regulation designed for providers on the financial market?); IORPs are there client themselves and buy i.a. AIF and UCITS;
- special features of IORPs are often not taken into account in regulation, which makes implementation even more difficult. The respective contact person in ministries and supervisory authorities for these cross-sectoral financial regulations usually have very little experience with IORPs, which makes it very difficult to find appropriate solutions.

Contact

Contact Form