

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.

Contributions not provided using the EU Survey tool or submitted after the deadline will not be processed and therefore considered as they were not submitted.

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

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[1] [Public Access to Documents](#)

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Should you still proceed with saving your answers, the online tool will immediately generate and provide you with a new link from which you will be able to access your saved answers.

It is also recommended that you select the "Send this Link as Email" icon to send a copy of the weblink to your email - please take care of typing in your email address correctly. This procedure does not, however, guarantee that your answers will be successfully saved.

You will have the possibility to print a pdf version of the final responses to the survey after submitting it by clicking on "Download PDF". You will automatically receive an email with the pdf file. Do not forget to check your junk / spam mailbox.

About the respondent

* Please indicate the desired disclosure level of the responses you are submitting.

- ☒ Public
☐ Confidential
☐ Partly confidential

* Stakeholder name

Dutch Federation of Pension Funds

* Contact person (name and surname)

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Questions to stakeholders

Executive summary

* Do you have any comments on the executive summary?

- ☒ Yes
☐ No

Please provide your comments on the executive summary.

The Dutch Federation of Pension Funds (Pensioenfederatie) and its members have read the Consultation paper on technical advice for the review of the IORP II-Directive with great interest. EIOPA takes a big step forward in modernizing the IORP II Directive and has put a lot of thought and effort in this consultation paper. We appreciate EIOPA's work on this important directive.

In this answer to the consultation paper, we have tried to respond to the questions as well as we could. Where applicable, we have tried explaining our reasoning and have provided some alternatives. Thank you for the opportunity to provide input to EIOPA's work on the IORP II Directive.

Chapter 1. Introduction

* Do you have any comments on the introduction?

- ☐ Yes
☒ No

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.

Yes, we agree that the present directive seems to get the balance more or less correctly. We infer this from the fact that ten Member States (page 29 Consultation Paper) have not implemented proportionality

measures for any of the IORP II provisions. We would like to add that supplementary national requirements (page 31 Consultation paper) are already within the remit of national legislators and NCAs.

We note that not only the Netherlands, but also Ireland is amongst the ten Member States not making use of proportionality measures, while Ireland is both characterized by a very large number of small IORPs and a very well-developed system of occupational pensions. This shows a European IORP Directive is relevant even for Member States with predominantly small IORPs.

The Consultation paper does not provide information that would allow for understanding the effects of the threshold on the number of Member States in which IORP is factually regulating IORPs. We are concerned if the number of Member States that have an interest in the IORP directive would be considerably reduced. An IORP directive that applies only in a minority of Member States that have both well-developed occupational pensions as well as large IORPs, would quickly lose its legitimacy. The subsidiarity principle would kick in and suggest that large IORPs should then be regulated at the national level.

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.

We do not agree with the proposed new threshold of which EIOPA itself already estimates that this would represent 30% to 45% of all IORPs (page 33 Consultation Paper), and probably many more given the fact that the well-developed IORP system in Ireland is characterized by a very large number of small IORPs. We fear this could lead to several Member States factually not applying IORP anymore. See also our answer to Q2.1.

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.

We disagree with the proposed restriction. We agree that the size criterion is not the only criterion. From the perspective of the participant, it does not matter how large their pension fund is, but how much money is being managed on their behalf. Nevertheless, we do feel that size can be a relevant factor in deciding the governance structure of the pension fund, as well as supervision. Both elements have cost implications which weigh heavier on the contributions of participants in small pension funds and as such proportionality can be in their favor. The size criterion should be used in combination with complexity and risk profile criteria, as is currently the case.

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

No

Please explain why or why not.

We strongly oppose the creation of two different categories of IORPs. From the perspective of the participant, it does not matter how large their pension fund is, but how much money is being managed on their behalf. As mentioned in Q2.3, the governance structure and burden of supervision can be tailored to the size. Otherwise, costs would weigh disproportionately on the participants of smaller IORPs. However, this should be a sliding scale, instead of a binary approach.

Moreover, this may lead to the creation of two categories of IORPs of which only one (namely the non-exempted IORPs) is fully regulated at the European level.

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?

We are not pleading for any change.

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'.

We disagree with this option. We note that already at present Member States make very different choices about proportionality. Widening the possibilities for such divergence is not helpful from the perspective of the internal market.

Given that the main risk for which IORPs are supervised is the retirement risk run by members and beneficiaries, we feel that Member States that do not themselves apply proportionality measures, should be in a position not to allow cross-border "low-risk profile IORPs" from other Member States on their markets.

The threshold of EUR 1 billion of total assets seems to us rather high. We would like to know better what effect this has in Member States without large IORPs. Excluding non-traditional asset classes may not necessarily result in lower risk investment policies. We have recently seen large problems arising out of financial institutions that operated rather simplistic investment strategies and/or business models. Smaller UK IORPs that outsourced their LDI-policies were hit the hardest by the "mini-budget crisis" (September 2022), as well as those UK IORPs that were highly invested in (government) bonds denominated in pounds. Similarly, the fall of the Silicon Valley Bank was caused by running a too high interest risk combined with an oversimplified business model.

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.

As mentioned, we disagree with this option. Looking at the proposed proportionality measures in table 2.1 for “low-risk IORPs” we question allowing one single person to run an IORP, since this takes away the “four eyes principle”. Allowing key functions to be fulfilled by the same person doing this for the sponsoring undertaking, might introduce potential conflict of interests.

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.

Again, we object against the principle of creating two categories of IORPs. We observe that the “no-low risk” category IORP would only exist in a handful of Member States. We feel that such an outcome would violate the subsidiarity principle. Occupational pensions and IORPs are very important in the Netherlands. It would not be politically viable to come to an outcome in which the EU sets rules that only apply in the Netherlands and perhaps a few other Member States, which takes away competence from for instance the Dutch parliament.

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.

Throughout the IORP Directive it might be possible to consider introducing more principle-based requirements that could be filled in, in practice by IORPs and under supervision of NCAs. Paying more attention to the aims behind requirements may also open up possibilities for proportionality. As an example, we would like to mention the PBS. In the context of compulsory participation of members and usually only few choice options, the PBS should not include information on which members cannot act. However, a minimum level of information set by the IORP directive and other directives, should be made easily available to members, beneficiaries and other stakeholders. The manner in which this is done could vary according to national specificities.

If one looks at the specific proposals in table 2.1, the differences proposed for different types of IORPs come down to the frequency of things being done. We would argue that frequency is not necessarily a good measure for the quality of doing these things.

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 understand and support EIOPA's awareness attention to liquidity risks in stress scenarios that IORPs may face if they use derivatives, particularly following the UK LDI crisis. The situation in the UK has demonstrated the implications of the post-crisis margin rules, for which the pension sector has long warned. These implications were the reason the EU decided to grant pension scheme arrangements (PSAs) a temporary exemption from central clearing under EMIR.

With the exemption set to expire soon, Dutch pension funds have been preparing for central clearing. As part of their preparation, they have invested in liquidity management capabilities at their treasury departments. Furthermore, our prudential NCA, the Dutch central bank (DNB), conducted various investigations into the robustness of our liquidity management over the past years. Following the UK LDI crisis, pension funds and their fiduciary managers have reviewed their interest sensitivity analyses and liquidity management processes. The liquidity management of Dutch pension funds proved robust during the turbulence on the financial market at the beginning of the Corona crisis and during the recent strong, albeit gradual, interest rate increases.

Moreover, we would like to point out several important differences between the Dutch pension sector and elements of the UK sector that caused problems in September 2022:

- In the UK, LDI strategies were executed by investing in investment funds, so-called LDI pools. In the Netherlands, pension funds tend to appoint a fiduciary manager that buys derivatives for the pension fund and at the same time oversees treasury functions. By centralizing both functions, the pension fund is operationally much better prepared to meet intraday margin calls. This structure also avoids including entities that are leveraged with more than 100% interest rate exposure.
- The level of interest rate hedging in the Netherlands is lower. Most pension funds, including the large industry-wide pension funds, hedge somewhere between 30% and 70% of interest rate risk.
- While the derivative exposures of the Dutch pension sector are large, it does not nearly play the same role in the EU bond market as the UK pension funds do in the UK gilt market. This preponderance set off the negative feedback loop, when pension investors were selling off gilts to meet margin requirements further push bond prices down, leading to more margin calls.

Nevertheless, we underline the importance of the issue. It is understandable that legislation requires liquidity management to be integrated in the risk-management processes of pension funds and that supervisors are mandated to oversee these processes. We therefore agree with option 1, as long as the concrete amendments to IORP2 follow a principle-based approach, leaving the implementation up to the national supervisor.

In addition to the importance of proper liquidity management within IORPs and the role of national supervisors, we finally note that there is a responsibility for both prudential and monetary authorities to

safeguard that repo-markets function well, also in times of financial stress. As long as repo-markets remain open, risks will remain manageable.

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.

Paragraph 2.5 of the Consultation Paper is unclear to us and the legislative proposals made seem broader than the issues identified. As such, to our understanding there is a disconnect between the issues identified and the concrete proposals made.

The first sentence of paragraph 2.5.1 refers to an unnamed EIOPA report from 2017. Are we correct in assuming that the consultation refers to the “2017 Market development report on occupational pensions and cross-border IORPs”? This report notes an emerging trend of IORPs set up by service providers for multiple unrelated employers and sets this apart from IORPs that are established by a sponsor or a group of sponsors (e.g. for industry-wide schemes). In the 2017 report, EIOPA raises the question whether from a supervisory perspective this affects the triangular relationship between the employee, the employer and the IORP and how this could impact on the governance and management of IORPs.

If indeed this is the issue, then it is important to note that two further characteristics of a “multi-sponsor IORP” are in our view essential:

1. There has to be an IORP that is established by a service provider; and
2. This IORP is aimed at multiple unconnected employers.

Therefore, traditional IORPs with a single pension scheme that are established by and operate for a specific employer or a specific economic sector, should be out of the equation. The word “unconnected” is important here, because in the 2017 report EIOPA distinguished this new phenomenon also from traditional industry-wide schemes.

Once we agree on which situations we are looking at, it becomes clearer what problems there could be. In fact, the issue is twofold. Firstly, the influence of service providers setting up IORPs may result in these service providers having much more influence over these IORPs than is the case of traditional IORPs that outsource (part of) the management of a pension scheme. And secondly, the link between sponsors and IORPs may be less strong than in traditional IORPs.

Furthermore, service providers that are independent from the IORPs whose pension schemes they (partly) manage, may have commercial interests that conflict with the interests of members and beneficiaries. However, in case of the three largest Dutch pension services providers APG, PGGM and MN a further safeguard can be found in the fact that their shareholders are directly or indirectly IORPs themselves. In practice, the largest IORPs play an important role in the governance of these three pension services providers.

We agree that there might under circumstances be a legitimate concern for EIOPA and NCAs. However, the present formulation of the legislative proposals in the Consultation Document for a definition of “service provider” as well as article 21-6 and article 31 are too broad.

The proposed definition of service provider would for example include the services of a caterer operating the canteen of an IORP, while the issue described by EIOPA only relates to a small subset of pension services providers. The very few sentences EIOPA uses on page 52 to explain its proposals do not seem to be based on any analysis of actual problems, but just a postulation that conflicts of interest may arise.

In respect of article 21, we support the proposed addition to article par. 1. However, the proposed addition to article 21(6) remains vague and does not add specifics to what is already proposed in 21(1), except for a suspicion of pension service providers that is unwarranted in our opinion. The second proposed addition to article 31 also seems to stem from such an unwarranted suspicion. We do not object to the addition of a breakdown of outsourcing costs, but wonder what this would change to normal business practice.

If our aforementioned suggestions for articles 21 and 31 are followed, there is also no need for a definition of service provider.

We are more open to the legislative proposal for article 9 but feel that the analysis provided does not suffice to introduce a permanent new requirement of updating business plans for all IORPs. It would be in line with the regulation of other financial institutions as well as logical in the context of the internal market, for supervisors to check the business plan of a new IORP (see also the EIOPA analysis par. 3.6). Making this a periodical and permanent requirement, however, would be beyond “registration or authorisation”. Particularly the requirement to regularly update the business plan would mean an unnecessary burden for IORPs outside the MIP category.

We can support the legislative proposal for article 10.

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.

We feel that the present text of IORP II does not stand in the way of national legislators taking measures that address the risks described by EIOPA in a tailor-made, proportionate and effective way. The 2017 EIOPA report mentions the introduction in the Netherlands of the General Pension Fund (APF) that allows to set up of vehicles that can harbour multiple, ring-fenced, pension schemes. EIOPA also mentions an important advantage of the APF, which is that it allows for market consolidation in bundling schemes that were originally managed by multiple - usually small - IORPs. Dutch regulation of the APF already contains specific rules to avoid and manage conflicts of interest in cases in which the APF outsources services to the entity that established the APF (<https://www.dnb.nl/voor-de-sector/open-boek-toezicht-sectoren/pensioenfondsen/prudentieel-toezicht/algemeen-pensioenfondsen/algemeen-pensioenfondsen>). Dutch APFs are subject to authorization by the prudent supervisor before getting a license to operate; as well as to continuous monitoring. In our view, the national prudent supervision currently applying to APFs is already in line with EIOPA's proposals.

The 2017 report also mentions multi-employer cross-border IORPs that are set up by service providers aimed at multiple unconnected employers, and para 2.5.2 of the Consultation Paper mentions that around 12% of cross-border IORPs do not manage domestic occupational pensions in the home Member State they operate from. The absence of serious activity in the home country might also raise doubts about the efforts that home NCAs of such institutions can and will take in supervising these entities. Seen from a Dutch

perspective (as a host Member State in case of cross-border IORPs), it is a serious concern if the IORP directive were to give rise to commercial parties providing pension schemes while engaging in regulatory arbitrage and/or by-passing social partners. In this respect, we wonder whether tailored anti-abuse measures could be drafted either at the European or national level to disallow the provision of pensions by IORPs that do not provide these services in their home country.

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.

We are generally cautious with the introduction of implementing technical standards in the IORP Directive, considering minimum harmonization and the primacy of NCAs. We appreciate that EIOPA does not advise implementing this policy option.

In the Netherlands, the NCA can already collect data. In our view, Option 1, giving NCAs access to data can help them get a better insight into the sector, facilitating better supervision and regulation. We also see value in a better information position for EIOPA. In our experience, EIOPA has good insights into the Dutch sector, but sometimes lacks adequate quantitative insights into all IORPs in other Member States. This makes it difficult for EIOPA to make a comparison between Member States.

We consider that the second sentence of EIOPA's advised amendment to Article 50, stating "This shall also include all regular information requested by EIOPA necessary to carry out its duties" is not specific enough. We would request EIOPA to further motivate the goals for collecting data, which should be generally within the role of prudential and behavioural supervision. It would also be good to further specify the scope, content and frequency of data collection.

Upon requesting additional data, it would be good for EIOPA to publish an impact assessment that outlines expected costs and benefits. We would further appreciate it if a recital in the Directive could specify that NCAs and EIOPA should be cautious in collecting data, to minimize reporting costs for IORPs.

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

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 agree with EIOPA that no harmonised solvency rules should be introduced, as stated in EIOPA's opinion on a common framework for risk assessment and transparency for IORPs (April 2016) and in this consultation paper.

We advise EIOPA to abstain from reiterating its advice as of April 2016 that a common framework for risk assessment and transparency should be introduced. Calculating the Common Balance Sheet (CBS) and reporting it to the national supervisory authorities and the participants on an annual basis as the standardised risk assessment would increase the tension on standards and required information between national supervisors and EIOPA. Furthermore, we are concerned that in the end this would result in an

introduction of harmonised capital requirements for DB IORPs at the EU level through the back door. For DC IORPs, the application of the CBS is not suitable, as it does not fit with such schemes for which liabilities match the assets in place.

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

- ☐ Yes
☐ No

Please explain your answer.

Although we have sympathy for solving an apparent problem in Portugal, we find it difficult to understand the explanation provided in para 2.8.1. In the “identification of the issues”, EIOPA speaks of establishing a pension scheme, which could be done by a professional association or body. We are not certain which problem could be created by this, and/or why this would not be allowed under the present text of IORP Directive. Introducing the suggestion of EIOPA into the definition of ‘sponsoring undertaking’ potentially broadens that definition beyond occupational, unless one were to interpret the word “professional” as somehow implying a gainful activity that is either employment, self-employment or a combination of these two.

Looking at the ‘costs and benefits’ also did not clarify – at least to us – what exactly is the issue at stake. Both for members and IORPs the text suggests the change could be positive, or negative.

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.

We support the expansion of the definition to include both equivalent third-country markets, as well as multilateral trading facilities and organized trading facilities. Dutch pension funds already invest significantly in third countries, which is beneficial from a diversification perspective. Moreover, our members would like to be able to make use of the different types of regulated markets and trading facilities.

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.

We agree MTFs and OTFs should be treated the same as regulated markets.

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.

Having an ORA is already a requirement in the Netherlands. Under the current FTK rules as well as the new Pension law (Wet Toekomst Pensioen, WTP) Dutch IORPs are required to define a risk attitude ('risicohouding') of members. Under the WTP, IORPs will also be required to conduct a regular survey among members and beneficiaries about their willingness and ability to bear risk and to use these preferences in deciding the risk limits of the IORP. We consider Option 1 to be in line with current and future Dutch practices; and support it.

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.

In the Netherlands, IORPs perform regular assessments of risk tolerance. We feel Option 2 is in line with current practices in the Netherlands and support it as long as the IORP Directive will apply minimum harmonization, national risk measures can be applied and risk measures will not be prescribed in the IORP Directive.

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

	Yes	No
* Section 2.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.3: Proportionality	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.4: Liquidity risk management	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.5: Conditions of operations and management of conflict of interest	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.6: Effective use of data	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.7: Standardised risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.8: Miscellaneous	<input checked="" type="radio"/>	<input type="radio"/>

Please provide your comments on section 2.8 Miscellaneous

We wonder if the IORP II Directive could provide more clarity about the obligation for IORPs to maintain regulatory own funds in case their members and beneficiaries fully carry biometric risks themselves (as a

collective), rather than the IORP itself.

In this respect, we note differences in wording between Article 13 ('provide cover against biometric risks') and Article 15, par. 1 ('underwrites the liability to cover against biometric risk'). And more specifically, we would like to point out the current Dutch pension reform, which will make Dutch IORPs provide variable annuities. These annuities are variable and depend on financial and biometric results, and the IORP neither provides guarantees nor -in our opinion- underwrites the liability to cover against biometric risks.

Would it be possible to clarify in a revised IORP II Directive - either in article 15 itself or in a recital - whether and when in these situations IORPs are considered to underwrite the liability to cover against biometrical risks as prescribed in Article 15, par. 1 and, as a result, will be obliged to maintain regulatory own funds?

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 can support the legislative proposals for articles 9 and 10 which are in line with the of other financial institutions as well as logical in the context of the internal market.

We would like to draw attention to our reply to Q2.11. We feel that IORPs that only provide pension schemes in other Member States than their home state, pose a considerable risk for regulatory arbitrage and/or bypassing the role of social partners and in particular trade unions. It should be considered to provide for a host Member State option to not allow the provision of pension schemes by such IORPs.

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 believe that the existence of supermajorities plays only a small role in the muted development of cross-border IORP activity. The main challenge lies in the fact that it is still necessary to follow the social, labour and tax law of the host countries. Therefore, the potential benefits of cross-border activity are moderate at best, as the single cross-border IORP needs to have sufficient knowledge and expertise in different national rules. Moreover, there are cross-references between tax, labour and prudential regulation which means that splitting these types of law between home and host countries can lead to unintended consequences.

On the issue of majorities, we read (on p. 92) that in a number of Member States a majority of members needs to approve cross-border transfers, instead of (as in other Member States) a majority of members who have responded to the request. We are, irrespective of the options suggested by EIOPA, in favour of relating the approval to the majority of votes cast. A majority of votes cast higher than 50% may de facto be easier to meet than a majority of 50% of all members.

Furthermore, the definition of majorities needed for domestic transfers should in our view not be decided at a European level but be regulated in the national laws of the Member States. Taking into account the previous bullets we can agree with either Option 0 or Option 1.

In addition, we would like to stress that, seen from a Dutch perspective (as a host member state in case of cross-border IORPs), it is a serious concern if cross-border transfers of pension schemes would be directed to commercial parties providing pension schemes given rise by the IORP directive while engaging in regulatory arbitrage and/or by-passing social partners. In this respect, we wonder whether tailored anti-

abuse measures could be drafted either at the European or national level to disallow the provision of pensions by IORPs that do not provide these services in their home country.

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

As mentioned in Q3.2, there are limitations to the potential benefits of the internal market for IORPs, due to the continued existence of diverging national social, labour and tax law. In paragraph 3.10.1, we read that the “tiny market share” of cross-border IORPs “is considered a failure by industry representatives...”. We wonder which representatives are meant here. We would like to emphasize that the Dutch Federation of Pension Funds - in our opinion - is not one of these representatives.

Moreover, EIOPA advises that the European Commission “should explore frameworks beyond the IORP II Directive that may offer more potential to grow the internal market”. In our opinion, the main focus should be the realization of Principle 15 of the European Pillar of Social Rights. As such, pensions should be promoted in Member States with underdeveloped pension systems. We do not consider it likely that cross-border provision of pensions will significantly contribute towards realizing Principle 15 in Member States with well-developed pension systems. Member States that would like to facilitate the use of the PEPP framework, could instance introduce appropriate tax incentives.

We note that the Commission has not yet reviewed Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights. Furthermore, progress with actions proposed in the CMU Action Plan has been limited, although substantial progress has been made with the development of a European Tracking System (ETS). More precisely we feel that actions regarding auto-enrolment and Pension Dashboard should be prioritized.

In respect of the cross-border issue, the question whether “improvements” of the IORP II Directive aiming at facilitating cross-border IORPs will lead to an increased cross-border IORP market could also be answered from another perspective: Solvency II includes several provisions to generate an EU internal market for insurance companies. However, in practice insurance companies rarely undertake cross-border activities themselves, but rather operate via local subsidiaries.

In conclusion, we do not see a strong need for further developing an internal market for cross-border IORPs. In our opinion, the main focus should be at to principle 15 of the European Pillar of Social Rights.

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

	Yes	No
* Section 3.2: Implementation and effectiveness	<input checked="" type="radio"/>	<input type="radio"/>
* Section 3.3 Relevant Legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.4 Other Regulatory Background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.5 Previous EIOPA Reports	<input checked="" type="radio"/>	<input type="radio"/>
* Section 3.6 Prudential Assessment Within Process of Registration or Authorisation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.7 Cross-border Transfers	<input checked="" type="radio"/>	<input type="radio"/>
* Section 3.8 Notification Procedures	<input checked="" type="radio"/>	<input type="radio"/>

* Section 3.9 Supervisory Cooperation	<input checked="" type="radio"/>	<input type="radio"/>
* Section 3.10 Potential learning from other frameworks	<input type="radio"/>	<input checked="" type="radio"/>

Please provide your comments on section 3.2 Implementation and effectiveness

Par. 3.2, (p. 77): EIOPA observes that the number of cross-border IORPS “has stopped expanding”. This is, however, a not entirely correct observation, because this number has decreased. In this respect, we refer to the EIOPA consultation document itself: (i) par. 3.5.2, p. 86) which mentions a “substantial drop” of 73 to 33 (by the end of 2020) and (ii) par. 3.5, p. 85 mentioning a further drop in 2021 from 33 to 31.

Par. 3.2.1 (p. 78): a majority of the NCAs was satisfied about the functioning of the cross-border provisions in IORP II and the EIOPA-decisions which are based on these provisions. This could be considered as an argument for EIOPA for not advising significant changes in the cross-border provisions in the IORP II Directive now to the Commission.

Additional arguments in this respect are the observations (i) (p.79, third paragraph) that many NCAs have no experiences with cross-border provisions and as a result cannot evaluate the functioning of these provisions and (ii) (par. 3.2.3, p. 81) that the majority (15) of NCAs could not identify any obstacles for cross-border activities and transfers.

Please provide your comments on section 3.5 Previous EIOPA Reports

P. 86: EIOPA establishes a link here between cross-border IORPs and its envisaged tightening of regulations applicable for MIPs. In this respect we refer to our argumentation with regard to Par. 2.5.

Par. 3.5.3 (in citing EIOPA’s most recent report on the market developments of IORPs) stakes stock of the reasons identified by NCAs why European companies do not consider cross-border activities. We consider it remarkable that none of these reasons directly relate to IORP II, which in our view can be considered as an additional argument for not modifying the cross-border provisions in IORP II now. The same goes for the - logical - conclusion (p. 88, last paragraph) that “the majority of practitioners did not believe that the IORP II Directive would have significant impact on the future developments of cross-border activities....”.

Please provide your comments on section 3.7 Cross Border Transfers

NB: we observe that the large majority of IORPs in the EU seems to have no ambitions in the sphere of cross-border activities. This is possibly due to the circumstance that IORPs also are social institutions and in most Member States have a not-for-profit character.

Please provide your comments on section 3.8 Notification Procedures

We agree with EIOPA’s advice on notification procedures with regards to “...a simplified procedure for pure DC-schemes in case of non-material amendments of a previously notified cross border activity..., and a simplified procedure for the expansion of previously notified cross-border activity with only one harmonized DC plan for all sponsoring companies.”

Please provide your comments on section 3.9 Supervisory Cooperation

We agree with EIOPA on supervisory cooperation. In par. 3.9.2, EIOPA mentions that there was no clarity between NCAs on what constitutes cross-border activity and transfers, and that this is an element that will not need a change in the IORP II Directive. We furthermore support EIOPA's Advice to "...further develop and enhance the current cooperative environment particularly through the BoS decision on the collaboration of NCAs...".

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.

When the PBS was introduced in European legislation, it was a best practice in pension communication. By bringing uniformity in definitions, retirement savings could be aggregated. And by bringing uniformity in how those data were presented brought a degree of comparability between pension schemes. As such, it gave the possibility of having an overview of retirement income, thereby improving pension adequacy and making retirement planning easier.

Nevertheless, the information in the PBS is often still hard to comprehend. Furthermore, the PBS does not include first pillar pensions, making it an incomplete overview for most members. And the comparability of information between pension funds is in practice still sub-optimal. Comparing the details of multiple letters is cumbersome and therefore ineffective. In a context of mandatory enrolment, such comparison cannot lead to choice for one pension fund over the other anyway. What is most important is comparing year on year changes in pension benefits, which is hard to do by juxtaposing PBSs.

Pension trackers provide superior comprehensibility, aggregation and comparability to the PBS. According to EIOPA, the goal of the PBS is to provide an overview of retirement income provided by IORPs in order to improve the adequacy of savings. (See: https://www.eiopa.europa.eu/system/files/2020-03/eiopa_pbs_guidance_and_principles_1.pdf) Pension trackers are able to better fulfil this role than the PBS. In 2019, a comprehensive evaluation was made of the Dutch Pension Communication Law, in which the PBS features prominently (see: <https://open.overheid.nl/documenten/ronl-58e75d8d-8b76-4327-9640-81ac42678400/pdf>). A survey from 2019 of 767 Dutch pension fund members finds that the pension tracking system dominates other sources of information on all aspects of usefulness. It is by far the most mentioned as the source that contributes most to knowing how much pension to expect, whether it is sufficient, and what risks and choices are involved. This is to show that, in Member States with an advanced pension tracking system in place, the PBS has become redundant.

Whereas the principle-based regulations of uniform information have stood the test of time, the prescriptive regulation may inadvertently create an impediment to more effective means of communication. By prescribing the content, form and timing of communication, the PBS hinders communication that is attuned to the member's preferences, needs and characteristics. Content prescriptions do not allow for tailored, layered and comprehensible information. The prescriptions for the PBS to be in the form of single file and durable medium make new forms of communication impossible. In terms of timing, the PBS is not communicated when action should be taken.

In Member States where the pension tracking system is well-developed and can provide updated information, the requirement for PBS could be dropped. If that would require regulation of the PTS, it should be principle-based.

We support principle-based requirements for the design of the PBS and has regard for the complementarity of the PBS with other communication tools available within the Member State. We think this option should be more thoroughly applied to the IORP Directive's articles on pension information and communication than EIOPA currently suggests, whereby prescriptive regulations are also removed. One point of attention is that the concept of 'comprehensible for the type of member' needs further clarification. For example, does it mean wording should be adapted to the member's language proficiency?

In the evaluation of the Dutch Pension Communication Law of 2019, the Dutch Ombudsman on Pensions concludes that "the content of the PBS is not used and the PBS only serves to bring attention to pensions". In the same evaluation, the Dutch supervisor AFM also remarks that the PBS mainly has an attentive function; for people to receive an annual reminder on their pensions. Along with the Dutch Ombudsman on Pensions and Dutch supervisor AFM, we consider that the PBS primarily has an attentive function. In as far as the PBS remains useful and in order to better suit an attentive function, we would suggest that the PBS could be shortened by referring to where such information can be found elsewhere.

Along with EIOPA, we see the benefits of layered communication (see: https://www.eiopa.europa.eu/publications/eiopa-report-iorp-ii-pension-benefit-statement-designs_en). In our view, layering refers to linking to information in a separate document or webpage. In the case where the pension tracking service provides comparability of key information, there could also be more room for personalized communication. We would suggest that the PBS shall specify where and how to obtain supplementary information, rather than providing comprehensive information. Pension fund members should be able to find the suitable links and sources in the PBS.

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. We believe information on sustainability is important and should be made available, easy to find and easily accessible for pension fund members. It does however not fall within the goal of the PBS, which is to provide an overview of retirement income provided by IORPs in order to improve the adequacy of savings. We support the goal of the PBS, as formulated by EIOPA in 2018 (see: https://www.eiopa.europa.eu/system/files/2020-03/eiopa_pbs_guidance_and_principles_1.pdf).

Pension communication should be based on informing the pension fund member in a way that relates to their preferences, needs and characteristics. Effective communication should be informed by insights from behavioural and communication research. Behavioural research shows that, in order to be effective, communication should be restricted to a single goal. Therefore, information in the PBS should be strictly limited to what is necessary for achieving its goal. Information on sustainability is not key for the preferences and needs of pension fund members. Rather than relating to one's personal pension entitlements, sustainability information is about the pension funds and its portfolio as a whole. For that reason, it should not be included in the PBS.

Sustainability information does not fit in the PBS' design objectives either. From EIOPA's analysis and advice, it remains unclear what the pension fund member should do with the sustainability information and how inclusion in the PBS (best) activates the member to take action. Furthermore, information from the SFDR and Taxonomy Directive is complex and does not lend itself well to communication with pension fund members. A short summary would not create a comprehensible insight, whereas a longer summary conflicts with the short and concise design of the PBS.

We think it is more appropriate to use other tools of communication for making information about

sustainability available. In the Netherlands, such information is reported by the board and; part of the Statement of Investment Policy Principles; and usually also provided on the pension provider's website. New members also get information about ESG-consideration through the Pensioen 1-2-3 environment (information for prospective members). Such tools are more used and better appreciated by pension fund members. They also offer more possibilities for layered and tailored information. Sustainability information could therefore be included in Article 40.

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

In this consultation, EIOPA advises to lengthen the PBS substantially by adding more information points. In general, we think that approach adds to the problems of the PBS as is, rather than improving it. Making the PBS longer is at odds with the design objectives of the PBS, as outlined by EIOPA, of making the PBS short and concise (see: https://www.eiopa.europa.eu/publications/eiopa-report-iorp-ii-pension-benefit-statement-designs_en).

Specifically, in this section EIOPA advises to include information on the investments, returns, risks and options in the PBS. Behavioural research shows that, in order to be effective, communication should be restricted to a single goal. At the same time, we identify that information on investment risks and options relates to risk profiles rather than pension adequacy. Whereas such information is relevant to the member, we do not consider it as key; and adding this goal will make the purpose of the PBS less clear. Including this information contradicts with EIOPA's PBS design principle "To design the PBS with a behavioural approach, so that the information addresses the key questions of the member and establish what (s)he should do with this information".

We can understand how it could be relevant to make information available on investment returns, risks and options, especially where members are able to select between investment options. We could envision that such information can be made available in a different format from the PBS. It could therefore be included in Article 40. It would be good to distinguish between the risk profile, returns on investment at the pension fund level and attributed returns. In some pension schemes, investment returns and risks are distributed unequally between lifecycles of members.

We think information should predominantly be provided at the personal rather than at the fund level. We could see the relevance of providing a periodic overview of mutations in pension entitlements, investment returns, premiums and costs; although this should not be included in the PBS. By providing information about how investment returns affect personal pension benefits, it is more comprehensible and members will be able to take clear action on the basis of their personal situation.

We prefer principle-based regulation on the need to make information on investment returns, risks and options available, rather than prescribing how such information should be provided.

We doubt whether it is appropriate to regulate information on investments at a European level. There are wide differences in investment risk and options between European pension systems and pension funds. For example, the new Dutch pension system will include investment risk, a solidarity buffer and return attribution to lifecycles.

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)?

We think the PBS has been successful in setting principles for uniformity, which has aided the development of pension tracking services. On the contrary, its prescriptions on form, content and timing of communication are too rigid. Notably, the requirement of a durable medium is not well-suited to the use of behavioural purposes and new communication tools.

As stressed in our response to Question 4.1, we consider that developed pension tracking systems can offer superior aggregation, comparability and comprehensibility as compared to the PBS. They thereby fulfil the goal and subgoals of the PBS better, whereby the PBS has become redundant. In Member States with a developed pension tracking system, the PBS could therefore be abolished. In the case of the Netherlands, the PBS was once a best practice in pension communication, but is now a hindrance to more effective pension communication.

We think the PBS is already too long and the information is not easily comprehensible. We regret that EIOPA does not address these issues. Rather, it advises to add more information to the PBS. Whereas we think that most of that information can be relevant to members, it does not answer key questions of members and does not fit within the goal of the PBS. This information can be more effectively made available in other formats.

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.

We see a shift in communication means from letter to email to a multiplicity of means of communication, which make it possible to present information in a more comprehensible and engaging way. Members deserve to be serviced using the latest insights from behavioural and communication sciences. We therefore embrace EIOPA's identification of digitalization as an opportunity in pension communication. Like EIOPA, we believe digitalization opens new possibilities for IORPs to reach out to their members through digital support.

We think that IORPs are best suited to consider how best to provide information to members and beneficiaries. Members and beneficiaries already have possibilities for requesting to receive information in the way they wish. Asking them repeatedly to make a choice will be overly burdensome on both the pension fund and its members and beneficiaries. As the choice is not relevant to most people, sending undesired communication will reduce the overall effectiveness of pension communication. Moreover, we are apprehensive of regulation prescribing channels, formats, medium and nature of communication, as it would block innovation. Therefore, we favour Option 0 over Options 1 and 2.

The Dutch Federation of Pension Funds believes that the prescribed format of the PBS will lose relevance as digital means of communication become more prevalent and digital literacy improves. We welcome Option 4, which assesses the format and information in the PBS in conjunction with other communication tools that are available now or might be available in the future. Considering the speed of change in the field of communications technology, we see the relevance of principle-based regulation that makes it possible to change modes of communication as digitalization progresses.

The way in which EIOPA intends to operationalise Option 4 requires further detailing. We believe pension trackers are better able to provide an overview of retirement income than the PBS. A survey of 767 Dutch pension fund members from 2019 shows that the pension tracking system dominates other sources of information on all aspects of usefulness to pension fund members (see: <https://open.overheid.nl/documenten/ronl-58e75d8d-8b76-4327-9640-81ac42678400/pdf>). Accordingly, we think enhanced synergies could mean for Member States with an advanced pension tracking system, that can provide updated information, the format of the PBS should not be required. Within the context of the PBS losing relevance, we find it reasonable that it should be used less prominently in communication. We therefore support the phrasing on

EIOPA's option 1 that the PBS 'shall be made available', rather than 'shall be provided'. It is more appropriate that the PBS should be always available, easy to find and easily accessible; rather than actively communicated.

At the same time, we have strong reservations when it comes to making the PBS available to members on a quarterly or semi-annual basis. People with pensions in the Netherlands can already find personal pension benefits information in the pension tracking system, where data can only be up to three months old. There is therefore no need for making that same information available in the inferior PBS format. Providing information in the PBS format is a costly exercise. Obliging pension funds to do it more often raises administration costs and thereby decreases pension adequacy, thereby affecting one of the main goals of the IORP Directive. In other Member States, pension funds would have to make costly changes to their data management infrastructure.

We oppose Option 3 on choice architecture. Within many Member States and IORPs, members have no or few choices when it comes to their pensions. The effectiveness of a choice architecture is highly dependent on the number of choices available to the member, the design of the scheme and the tools that pension funds have to help members take decisions. Considering the diversity of choice on pensions between member states and pension funds, European legislation does not seem appropriate. Choice guidance goes beyond the scope of minimum harmonization and touches upon the design of the pension scheme.

Furthermore, the term 'choice architecture' seems to relate to digital tools. It should be noted that 'choice guidance' is not only relevant in a digital context. Various tools and channels of communication can be used, such as a telephone call with the member to talk through the options he or she has. Regulating choice architecture in the IORP Directive is therefore too rigid and does not take due consideration of different practices of choice guidance.

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

Before answering this question in greater detail, we would like to remark that we do agree with EIOPA that transparency of costs and charges is very important because of their potential effect on pension outcomes. However, in a context of limited or no choice for members and beneficiaries in compulsory pension schemes it is more important to provide overall transparency and report to supervisors (see also our response to Q5. 3) than to inform members and beneficiaries. Breaking down this information to individual members and beneficiaries beyond the level of choice or options they have, does not serve any reasonable purpose.

We feel that in EIOPA's proposals for additional information requirements on costs to be added to the PBS, EIOPA foregoes on the questions of why information should be included in the PBS and how the PBS can be effective at reaching its goal. It thereby neglects the goal and design principles it has established itself. We do not think information on costs and charges fits within the goal of the PBS.

We think EIOPA demands of pension funds foregoes on many complexities on breaking down and attributing costs that could mean considerable extra costs for pension administration. We doubt whether the benefits for members weigh up to these costs. EIOPA advocates better comparability of cost information. We doubt whether their advised amendments to IORP II will offer such comparability. In the absence of definitions of 'costs of administration', 'investment costs', 'assets' and 'portfolio transactions', costs can be accounted for very differently. Providing such definitions will be hard, considering the heterogeneity of the pension sector.

EIOPA advises (Article 39, first bullet) that administration costs should be broken down and reported to facilitate comparability. Administration costs are however incomparable, as funds can choose to provide a

higher or lower level of service to its members, with consequently different cost levels. This can be justified by members' needs and preferences. Cost comparison, when overdone, create incentives for pension funds to decrease service levels, which is undesirable.

EIOPA further advises (Article 39, first bullet) that investment costs should be broken down to facilitate comparability. We think this would give an incomplete and undesirable impression of costs. Investment in different assets have widely different costs. Illiquid assets tend to have few transactions, meaning there might be high transaction costs in a year when assets are acquired, but zero transaction costs in subsequent years. Some asset classes come with higher costs, which might be perfectly justified because they yield higher return or they might diversify the risk of the investment portfolio. Information on investment costs would therefore have to be complemented by the risk return profile of the assets, the frequency of portfolio transactions and the investment returns.

There could be further challenges in showing investment costs in monetary terms (Article 39, first bullet), as investment returns and risks could be attributed differently among pension fund members. It could be the case that a pension fund invests money collectively for groups of members with different investment options (e.g., defensive and offensive). Or that returns and risks are redistributed within the fund based on lifecycles. Or that costs are not (all) borne directly by the members.

Estimating how costs impact final benefits (Article 39, second bullet) can be difficult. Many IORPs have solidarity mechanisms, whereby costs, investment risks and benefits are not directly or entirely borne by members.

When it comes to cost information to be given to prospective members (Article 41), we agree with EIOPA that information on costs can be relevant, but only where they can take investment decisions. In that case, prospective members have an important and impactful decision to make. Information on the investment options available and their risks could then be useful. A further breakdown of costs, as proposed in Article 41.2(b), would however provide too granular information.

The various difficulties of accounting costs point at the differences between Member States and pension funds. It leads us to think that, according to the subsidiarity principle, Member States are better placed to regulate cost reporting. Most people save for pension in one Member State. European rules on cost reporting would give them no benefit from comparability across Member States, while they would bear higher reporting costs. It is highly doubtful that comparability between Member States is achieved. In so far as it could be, the mobile workers who theoretically may benefit would in practice be overloaded by information. For them more than others, it is hard enough to comprehend the basics of multiple pension systems, so they should only be catered to with key information on their benefits.

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.

The requirements for projections that EIOPA proposes are less demanding than Dutch regulation currently prescribes. Dutch pension funds use more complex models, with two thousand scenarios. In that light, the proposed requirements should be minimum requirements, so that there is room for more elaborate projections.

We stress that the IORP Directive should not prescribe indicators for what scenarios to use in projections. For example, inflation is different between Member States. We therefore believe scenarios should continue to be specified at the Member State level. In its 2021 impact assessment with the Opinion on the supervision of long-term risk assessment by IORPs providing DC schemes, EIOPA also concludes that a principle-based

approach on projections is preferable over a uniform approach. It “strikes the best balance between enhancing protection of members and beneficiaries and limiting the costs for IORPs.” (see: https://www.eiopa.europa.eu/publications/opinion-supervision-long-term-risk-assessment-iorps-providing-defined-contribution-schemes_en)

A point of attention is that pension funds cannot and should not be responsible for projections of products they do not offer themselves. In the upcoming Dutch ‘flexible pension scheme’, it will be possible for members of some pension funds to choose between fixed or variable pay-out. They have the right to shop for the best fixed pay-out with insurers. Pension funds with a flexible pension scheme will offer either variable pay-out, or fixed pay-out under the old regulatory regime. Other pension funds do not offer services in the pay-out phase at all. A pension fund cannot give pre-retirement projections for fixed pay-out at external parties, so they should not be held responsible for making these projections. That being said, it will not always be possible to allow members the benefit of comparison between different options, especially so considering insurers could use different calculation methods.

We note that after the Dutch pension reform, there will also be an option for pension funds to offer the ‘solidary pension scheme’, where all members will receive variable pay-out. In case of a variable pay-out, members will receive three scenarios pre-retirement.

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?

We would not. We believe that a useful scenario set should be stochastic. It is difficult to come to a scenario set that would be useful all across Europe. It should be left to Member States to develop their national sets, as is the current practice in the Netherlands. Even on a national level, the Dutch experience shows that it is hard to produce a scenario set that is better than what pension providers can do on their own. In that sense, a mandatory European data set would increase the possibility for projections to be less precise than possible. For example, inflation levels differ substantially between Member States. The added value of a European scenario set – better comparability of projections for members – is also quite limited given that most members only compare projections on a national 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.

EIOPA proposes to introduce requirements for IORPs to ensure that schemes are as suitable to the members’ and beneficiaries’ needs and risk profiles as possible, similar to rules in MiFID, IDD and PEPP. As EIOPA rightfully states, in the Netherlands the IORPs are pension institutions with the social purpose of providing retirement income to their members. IORPs do not design the pension scheme, social partners do. Social partners, who are also in the board of the pension fund, have a legal responsibility to design the scheme and make decisions in such a way that it benefits members, beneficiaries and future members. All IORPs in the Netherlands are set up as not-for-profit foundations.

Introducing requirements to ensure the appropriate structuring and implementation of the pension scheme by the IORP will hinder this practice. The IORP becomes responsible for the design of the scheme, for which it cannot bear any responsibility. Another issue is that these requirements will likely result in a large amount of reporting from IORPs to supervisors, resulting in higher costs for members. Furthermore, the supervision on governance is, in the Netherlands, in the hands of the Dutch Central Bank (DNB, the prudential supervisor), while the supervision on the proposed requirements would most likely apply to the Dutch Authority for Financial Markets (AFM).

EIOPA's aim to make sure in the case where social partners are not involved in designing the pension scheme does make sense. However, the chosen option seems too broad. EIOPA points at the existence of IORPs established by for-profit service providers, where there may not be the same safeguards in place to ensure that the interests of members and beneficiaries take precedence in the design of an appropriate pension scheme. In our response to questions Q2.10 and Q2.11 we try to establish that the problem is linked predominantly to IORPs providing pension schemes to unconnected employers, while these IORPs are established by commercial service providers, where both IORP and service provider are outside the control of social partners.

In as far as these IORPs operate within one Member State we feel that national legislators and NCAs are better positioned to ensure that the interests of members and beneficiaries are taken duly into account. In the proper design of a pension scheme it is very important to take account of national pension, labor and tax law in the country of provision of a pension scheme. We feel that national legal requirements in these areas, most likely will already protect against the risks described.

Even in the case of cross-border provision of pension schemes, we are not certain whether this risk really materializes in practice, but agree that the issue merits consideration. The real risk might lie with the small number of cases in which such IORPs do not provide (a considerable amount of) pension schemes in their own home Member State. In this situation, it is not so obvious that their home NCA's have sufficient incentives and knowledge to properly supervise the appropriate structuring and implementation of the pension scheme. See also our response to Q2.11.

Given the likely scale of the problem described, we think it is premature to consider introducing legal requirements on the appropriate structuring and implementation of pension schemes. It would be disproportionate to apply them in purely national situations as well.

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.

As stated in the previous answer, we believe that these new requirements should not be applied to all IORPs. The design of the pension scheme might not be the responsibility of the IORP itself.

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.

No.

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?

We understand EIOPA's desire to introduce a duty of care. We are in favour of principle-based communication rules, but we think EIOPA's formulation of the duty of care is too broad. Pension fund members' interest are already protected by a duty of care in civil law, as well as paritarian pension fund governance structures. A general duty of care towards members also disregards the interests of other stakeholders involved, next to those of (prospective) members and beneficiaries.

In the Netherlands, duties of care for communication and choice guidance are being put in place, without providing a general duty of care. If they are sufficiently clear and concrete, they can provide adequate safeguards. Rather than providing a general duty of care, we would support the introduction of more specific duty of care provisions on pension information and communication. Open norms should provide uniformity of goals, intended results and principles, rather than communication content, presentation, tools or channels, unless those are proven to be functional or effective. In applying open norms, pension providers should explain how chosen communication approaches are effective rather than execute a compulsory communication approach. It would mean for supervisors to take a risk-based approach in ensuring IORPs deliver on their promises.

The IORP Directive should instil the principle that information should always be available, easy to find and easily accessible. We propose an obligation to make complete and updated information available for a member to download, retrieve or archive at a self-selected time, in a way the member prefers.

As indicated in response to question 4.5, we oppose European legislation of choice architecture. We therefore do not support the last part of the proposed text: "Member States shall ensure that every IORP [...] provides prospective members, members and beneficiaries with the necessary tools to properly assess the choices or options provided by the IORP." Within many Member States and IORPs, members have no or few choices when it comes to their pensions. The effectiveness of a choice architecture is highly dependent on the number of choices available to the member, the design of the scheme and the tools that pension funds have to help members take decisions. Considering the diversity of choice on pensions between member states and pension funds, European legislation does not seem appropriate. Choice guidance goes beyond the scope of minimum harmonization and touches upon the design of the pension scheme.

Furthermore, it should be noted that choice guidance is not only a question of using 'tools'. Choice guidance should be attuned to groups of members, each of which can be guided with different tools and channels of communication. For example, a digitally illiterate member can be helped with a telephone call to talk through the options he or she has. Regulating 'tools' for choice guidance in the IORP Directive is therefore too rigid and does not take due consideration of different practices of choice guidance.

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

In the Dutch pension reform, the choice was made not to have a general duty of care for pension funds. There are however open norms to communication, for example with regards to choice guidance (keuzebegeleiding) and risk preference research (risicopreferentieonderzoek).

We would refrain from framing a duty of care in general terms. We consider the choices made in the Dutch pension reform as workable and a good practice. At the European level, we see merit in a duty of care for good communication. Considering choice is very closely connected to the design of the pension scheme, we are of the opinion it falls outside the remit of what the IORP Directive should be able to regulate. Moreover, the broad differences in pension choice between IORPs and Member States would make it hard to do so.

We do not think PARP requirements should apply to pension funds.

We would propose a duty of care to be provided in the following words: “Taking into account the nature of the pension scheme established and in particular where members and beneficiaries bear risks, Member States shall ensure that every IORP registered or authorised in their territories appropriately structures its communication tools and channels in accordance with the best interests of members and beneficiaries.”

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	<input checked="" type="radio"/>	<input type="radio"/>
* Section 4.2.2 Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.3 Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.4 Structure and format of the PBS	<input checked="" type="radio"/>	<input type="radio"/>
* Section 4.2.5 Information in the PBS on sustainability factors	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.6 Other considerations regarding the contents of the PBS	<input checked="" type="radio"/>	<input type="radio"/>
* Section 4.3 Digitalisation	<input checked="" type="radio"/>	<input type="radio"/>
* Section 4.4 Transparency on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.5 Projections (Information on potential retirement benefits)	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.1 Appropriate structuring and implementation of the scheme	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.2 Duty of care	<input type="radio"/>	<input checked="" type="radio"/>

Please provide your comments on section 4.2.1 General evaluation of the functioning of the PBS

The Dutch Federation of Pension Funds welcomes EIOPA’s work on pension communication. Before answering EIOPA’s questions, we would like to make some general remarks.

The Dutch pension system is characterized by mandatory participation and relatively limited choice options for members. The same situation remains even after the introduction of the new pension legislation (Wet Toekomst Pensioenen). Pension information in the Netherlands through the PBS is therefore aimed at giving members insight in their future financial situation and helping them make informed decisions, and not at enticing members to save for their retirement, to compare pension providers or to give them the different options to choose from. We believe that providing more information is not always helpful in the understanding of members and might even lead to an information overload.

The trend towards principle-based communication therefore is a welcome one. This allows pension providers (and pension tracking services) to cater to the needs of members and allows to take into account technological progress and behavioural insights.

We see a shift in communication means from letter to email to a multiplicity of digital means of communication as well the application of artificial intelligence, which makes it possible to present information in a more comprehensible and engaging way. Regulation tends to lag behind fast-moving technological developments. In this context, regulation benefits from offering uniformity in communication goals rather than communication means. In other words, it should stipulate what to communicate, not so much how to

communicate.

We therefore propose to apply principle-based communication rules, setting open norms to ensure effective communication. Open norms provide a uniformity of goals, intended results and principles, rather than prescribing communication formats, tools or channels. In applying open norms, pension providers should explain how chosen communication approaches are effective rather than execute a compulsory communication approach. This would make the IORP Directive more technology neutral and gives NCAs more discretionary space to supervise.

EIOPA has taken steps in acknowledging the value of this approach. In 2013, EIOPA advised to take behavioural purposes as the starting point for drafting information requirements: what should people be able to 'do' with the information? (See https://register.eiopa.europa.eu/Publications/Reports/Report_Good_Practices_Info_for_DC_schemes.pdf) This goal can be reached by providing tailored, layered and comprehensible information that is communicated when action should be taken. In 2016, EIOPA observed the transition towards a principle-based approach in several EU Member States. (See https://www.eiopa.europa.eu/document-library/advice/technical-advice-development-of-pension-tracking-systems_en) 'Scheme member engagement' is seen as a relevant criterion for assessing the use of communication tools and channels. EIOPA also states: "parties communicating to scheme members are encouraged to keep considering what would be the most appropriate communication tools and channels on each occasion". Pension fund members would benefit from principle-based communication rules. We therefore support general duty of care provisions on adequate pension information and communication as well as principles-based requirements for the design of pension communication.

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

When the Pension Benefit Statement was introduced in European legislation, it was a best practice in pension communication. Principle-based regulation for uniformity in data definitions and presentation facilitated a degree of aggregation and comparability. Nevertheless, the information in the PBS is hard to comprehend. The aggregation level at pension fund level is inadequate for giving a complete overview of all first and second pillar pensions. And the comparability of information between pension funds and other pension providers is currently sub-optimal. Comparing the details of multiple letters is cumbersome and therefore ineffective. In a context of mandatory enrolment, such comparison cannot lead to choice for one pension fund over the other anyway. What is most important is comparing year on year changes in pension benefits, which is hard to do by juxtaposing PBSs.

Pension trackers provide superior comprehensibility, aggregation and comparability to the PBS. According to EIOPA, the goal of the PBS is to provide an overview of retirement income provided by IORPs to improve the adequacy of savings (see: https://www.eiopa.europa.eu/system/files/2020-03/eiopa_pbs_guidance_and_principles_1.pdf). Pension trackers are better able to fulfil this role than the PBS. The PBS thereby becomes less relevant, perhaps even redundant.

Whereas IORP II's principle-based regulations have stood the test of time, the prescriptive regulation creates an impediment to effective communication. By prescribing the content, form and timing of communication, the PBS hinders communication that is attuned to the member's preferences, needs and characteristics. We support EIOPA's ideas to enhance synergies between the PBS and other communication tools, such as the pension tracking service. If that would require regulation of the PTS, it should be principle-based. In Member States where an advanced pension tracking system can deliver updated information, the PBS could be dropped.

The Dutch Federation of Pension Funds finds that policy advice should be based on insights from behavioural research. In this respect, the comprehensive evaluation of the Dutch Pension Communication Law is relevant to consider (see: <https://open.overheid.nl/documenten/ronl-58e75d8d-8b76-4327-9640-81ac42678400/pdf>). It finds that other communication channels than the PBS are far more used and considered more helpful. Pension fund members' biggest concerns with pension information are with the comprehensibility, findability and relevance of information. Asked for improvements, members suggest making information simpler, providing one comprehensive overview of personal financial information and aligning information more closely with the member's personal pension accrual. These findings go against adding pension fund-level information to the PBS.

In the evaluation, the Dutch Ombudsman on Pensions concludes that "the content of the PBS is not used and the PBS only serves to bring attention to pensions". In the same evaluation, the Dutch supervisor AFM also remarks that the PBS mainly has an attentive function; for people to receive an annual reminder on their pensions. We see the logic in that. In as far as the PBS remains useful and in order to better suit an attentive function, we would suggest that the PBS could be shortened by referring to where such information can be found elsewhere.

Please provide your comments on section 4.2.6. Other considerations regarding the contents of the PBS

EIOPA identifies the goals of the PBS in the paragraph on the structure and format of the PBS. These considerations are however not applied to further paragraphs. We feel that, with EIOPA's proposals for additional information requirements to be added to the PBS, EIOPA foregoes the questions of why information should be included in the PBS and how the PBS can be the most effective instrument at reaching its goal. Adding more information seems to contradict the goal of the PBS.

Additional information requirements on sustainability, investment returns and risks, costs and investment decisions often relate to the pension fund at an entity level. They do not contribute to a personal overview of retirement income. Including these requirements makes the PBS longer and more complicated, which is at odds with the goal of the PBS, as specified in Article 38.1, that the PBS shall be a 'concise document'. Although we agree that information on these aspects is important, and should be up to date and easily accessible, other means of communication are more appropriate for that than the PBS.

We are in favour of layered information. In our view, layering refers to linking to information in a separate document or webpage. Rather than presenting in-depth information in the PBS, pension fund members should be able to find the suitable links and sources in the PBS. We would therefore propose to add additional information items to Article 40 as Supplementary Information, rather than Article 39 on the PBS. We would also propose to transfer paragraphs 1f, 1g and 1h of Article 39 to Article 40.

Please provide your comments on section 4.3 Digitalisation

EIOPA, in its 2016 report, acknowledges that when it comes to communication tools and channels, "one size does not fit all". (See https://www.eiopa.europa.eu/document-library/advice/technical-advice-development-of-pension-tracking-systems_en) Communication practices and strategies should be seen as a mirror of their time. Regulating a certain medium of communication locks the use of such medium across time. EIOPA does not wish to promote one specific communication tool or channel at the expense of other possibilities. Rather, it recommends a multi-channel communication strategy which combines several communication tools and channels as an effective way to reach different types of scheme members with their own habits and preferences.

IORP-II articles 36 and 38 require IORPs to make information available in a 'durable medium'. Information

should be gathered in one document (paper or .pdf format) or an unchangeable template in an online personal environment; i.e., a requirement to use a sustainable carrier of communication that is communicated through a single medium. This requirement impedes the provision of layered information and the application of new and digital means of communication to make information available in an accessible way.

Instead of prescribing the carrier and medium of communication, IORP regulation should instil the principle that information should always be available, easy to find and easily accessible. We propose an obligation for the IORP Directive to make complete and updated information available for a member to download, retrieve or archive at a self-selected time, in a way the member prefers. That should include an archive of all communication that the member has received.

Chapter 5. Shift from Defined Benefit to Defined Contributions

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

Legally, the ORA focuses on the risks to which the fund is exposed and those that impact its members. In the Netherlands, we distinguish between a non-financial and a financial risk ORA. The risk impacting fund members are part of the financial risk ORA, which includes risk tolerance, ALM, and – for the current DB schemes - recovery plan and feasibility test. Option 1, which concerns DC IORPs, can be interpreted to be largely in line with the approach used for Dutch DB schemes.

We feel that the proposed options may address theoretical risks, but do not necessarily address the specificities of different schemes at the national level. Any amendment of the IORP directive should therefore be drafted in such a way that national legislators and NCAs can adapt to approaches that indeed provide relevant extra protection to members and beneficiaries, but do not result in disproportionate administrative burdens.

In the case of IORPS where members cannot select their investments, it should be sufficient to survey a representative sample of members on their risk preferences, at least every five years. It should be noted that risk tolerance should not be directly translated into investment strategy. According to the prudent person rule, factors like member characteristics, future contributions and statutory pensions should also be factored in. Option 1 should therefore have due consideration for the prudent person rule. Also, it would be good to further specify a review period of the investment strategy of five years. If and when necessary, the IORP can do so more frequently.

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?

We feel the analysis of the effects of choice in investments for members and beneficiaries, if and when applicable, needs to be expanded on. Experience from other countries taught us that not all schemes that have introduced such choice have resulted in better pension outcomes for members, partly because many people find taking financial decisions quite complicated. Research shows that that few members make active investment choices; and those that do often choose the default option. For a negative example we would mention Chile. Choice structures should help members and beneficiaries to opt for appropriate investments for their situation.

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?

This question appears to contain an error. We answer the question in line with para 5.5.2. which is about supervisory reporting. The issue of reporting to members and beneficiaries is dealt with in the context of chapter 4 of the Consultation Paper.

We agree that transparency of costs and charges is very important. In general, we would expect IORPs to be very cost efficient, compared to other types of pension providers. In Annex, Section 6, page 223, the EIOPA consultation paper illustrates that expenses of existing Dutch pension schemes are very low. Objectively low costs and charges help legitimize compulsory participation in performant pension schemes.

A point of attention is that the supply of information/data to the NCA and EIOPA should match as closely as possible, to avoid an increase in supervisory costs resulting from double reporting. EIOPA could further consider the results of publishing an overview of IORPs' costs and charges.

EIOPA's Opinion on the supervisory reporting of costs and charges of IORPs is broadly in line with the breakdown of administration costs as included in the Administration Costs Recommendations by the Dutch Federation of Pension Funds. From a Dutch perspective they form a good basis to develop a methodology for reporting costs and charges. Given that costs and charges regularly lead to discussions also in the OPSG and in particular on behest of 'Better Finance' and about its annual reports, we are curious to see how other stakeholders will reply to this question. If the replies are very divergent, it might be useful to delve a deeper into what would be the most appropriate (and proportionate) methodology.

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 support transparency by NCAs on their risk assessment framework. Good communication between supervisors and IORPs can provide an important contribution to the effectiveness of supervision.

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	<input checked="" type="radio"/>	<input type="radio"/>
* Section 5.3: Background information on Defined Contributions	<input checked="" type="radio"/>	<input type="radio"/>
* Section 5.4: Previous EIOPA Reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5: Policy options to address the shift to DC	<input checked="" type="radio"/>	<input type="radio"/>
* Section 5.5.1: Long-term risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.2: Supervisory reporting on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.3: Complaints procedure and Alternative Dispute Resolution (ADR)	<input checked="" type="radio"/>	<input type="radio"/>
*		

Section 5.5.4: Article 51.2 - Increased transparency of National Competent Authorities – Risk assessment framework	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.5: Financial education	<input checked="" type="radio"/>	<input type="radio"/>
* Section 5.5.6: Member and/or beneficiary involvement in IORPs governance	<input checked="" type="radio"/>	<input type="radio"/>
* Section 5.5.7: Fit and proper requirements	<input checked="" type="radio"/>	<input type="radio"/>

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

The questions posed in this chapter are only partly relevant for Dutch IORPs, because the general introductory part in paragraphs 5.1 through 5.4 generalizes the shift from DB to DC in a fashion that leaves out crucial characteristics from both the existing Dutch DB pensions, as well as the future Dutch DC pensions (as of 2027 at the latest). This leads to questions that are only partly applicable to the situation in the Netherlands.

On page 146, EIOPA states that the Dutch system transitioning to DC will make the European market a predominantly DC one. This of course is correct, but it still is important to take note of the specificity of the Dutch transition.

In the very large majority of current pension schemes implemented by Dutch IORPs there is no sponsor support, nor do the IORPs themselves provide guarantees to its members. Indexation is conditional to the funding status and only possible when the surplus is adequate. And as an ultimate remedy it is even possible to reduce pension rights and pension payments. Although the system still operates on the basis of defined benefits, risks are generally already shifted towards the collective of members and beneficiaries. Therefore, by EIOPA's own definition, the current Dutch system could already be categorized as DC. This in contrast to the definition of DB and DC commonly used in the Netherlands, which is based on the fact that the present DB schemes are administered in terms of (non-guaranteed, nominal) benefits, rather than capital.

The cornerstone of the system, compulsory participation, will be maintained. Other important elements of the Dutch pension system, such as risk sharing and solidarity, are also maintained. The social partners continue to support the general ambition level of the system, defined as a replacement rate of 75% after a career of 40 years. Governance of IORPs will remain with social partners who nominate boards of IORPs as well as set the pension schemes.

The reform will provide IORPs the choice between two models for pension schemes with corresponding contracts: the solidarity scheme and the flexible scheme. The solidarity scheme will remain almost completely collective and will contain only very limited choice (no investment choice). Returns will be attributed according to age which will allow young people to take more risks than older people, but investments themselves will remain collective. A smoothing system with a buffer will be created to ensure that pension outcomes will not be very volatile from year to year. Therefore several solidarity mechanisms remain. The flexible system will allow for more choice (between fixed and variable annuities, but also the possibility of investment choice), but will nevertheless contain a risk sharing buffer and will not become completely personal either.

The expectation is that a majority of IORPs representing a very large majority of members and beneficiaries will opt for the solidarity scheme. Much more could be said, and we would be happy to discuss the reform in great detail with both EIOPA and the Commission. For the purposes of answering the questions in chapter 5 the above hopefully is already helpful. We feel that an advice from EIOPA to the Commission would benefit from explicitly making clear that the shift from DB to DC in the Netherlands in key aspects is different from

what one might generally believe to be such a shift. We suggest the following text:

“The present Dutch pension system is already now a development from a pure DB system towards some DC elements, in so far that both the build-up of pensions as well as the payment of pensions and indexation of these pensions, are legally promises and not rights. In most Dutch pension schemes there are no sponsor obligations left beyond the payment of premiums. If the unfortunate situation arises that a Dutch pension fund cannot honour these promises anymore, both pensions and pension payments can be reduced. Over the last decade or so, this resulted in most pension schemes not paying indexation. The new Dutch pension system will be an explicitly contribution system. But this new system will remain compulsory, collective, and will contain several new solidarity mechanisms amongst which a buffer to avoid undue volatility from year to year. Premiums will remain largely at the same level as today, although the system of pension accrual will be made actuarially fair. Because of this there is no further shift from investment risks to the collective of participants and beneficiaries. At the same time choice for individual options will remain very limited under the solidarity scheme and quite limited under the flexible scheme. Just as today the Dutch pension system will remain hybrid somewhere in between pure DB and pure DC.”

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

On page 146, EIOPA enumerates risks for DC savers. We will make remarks on all five from the perspective of future Dutch DC schemes and in particularly the solidarity scheme.

Retirement risk: the combination of maintaining present (high) premium levels in the Netherlands with a buffer mechanism to avoid excessive differences in outcome in retirement years, should lead to retirement income risk not being bigger than in the present Dutch DB system. As explained, under the present system there already is no sponsor guarantee and no guarantee from the IORP itself. Under the new system the uncertainty may be a little bit bigger, while financial outcomes over a longer period through the cycle should be slightly higher, for needing less buffers. Besides that, it should not be forgotten that the Dutch public first pillar sets a minimum income for almost everybody in the Netherlands (that protects very well against poverty), irrespective of working or career history.

Investment risk: a very large majority of members and beneficiaries will remain in a collective system with collective investment policies that will not be very different from the existing investment policies. But the investment policies will be better tailored towards risk profiles of age cohorts, applying life cycle approaches. Interest rate risk will continue to be hedged to a large extent.

Costs and charges: Dutch IORPs report about costs and charges based on a methodology set in guidelines of the Pensioenfederatie and Dutch prudential supervisor DNB also provides information on cost and charges of individual IORPs on its website. The framework aims to be as comprehensive as possible, based on principles such as no-netting and look-through. Both in the current and in the new system, low costs are important to achieve good pensions. However, in a system of compulsory participation, individual members and beneficiaries have no option to change to other IORPs. Therefore, cost-efficiency is achieved in the Netherlands by disclosures of costs to the social partners and supervisor, rather than communicating directly to members and beneficiaries. However, setting clear reporting standards may be helpful.

Administration and governance: Dutch IORPs are governed by social partners, and this will remain unchanged. Employers as well as employees will continue to pay premiums. We do not see any big changes from the existing DB scheme towards the new DC schemes in the Netherlands.

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

On page 154, EIOPA (“identification of the issue”) describes the issue it considers might need to be addressed in the IORP review. As explained above, we do not agree that the change from DB to DC as proposed in the Netherlands really does increase risks for members and subsidiaries. However, taking account of members and beneficiaries risk tolerance in the scheme’s (investment) policy and providing them with insight based on projections are part of the Dutch legislative proposal. The new law will oblige IORPs to find out about risk attitude of members and beneficiaries and the (investment) policy should take into account these findings. It is, however, crucial to understand that under the new solidarity contract, the risk attitude in the end will have to be a collective risk tolerance, and not one which will be different for different individual members and beneficiaries, because also in the new system, Dutch IORPs will operate one single investment policy. Finally, it is obvious that members and beneficiaries have a need to be well informed about how ‘pension pots’ may translate into pensions under a few different realistic scenarios.

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

The Dutch legislative proposal for pension reform does include a complaints procedure. We still have to verify whether this also includes an ADR possibility that would fit the requirements. Articles 50 and 51 of the PEPP-regulation look like a relevant precedent. The maximum time to respond to complaints of 15 working days, appears to be challenging.

Any specific text should be carefully studied in as far as it may extend the scope of issues that may be submitted in the complaints procedure and for ADR. It would not be acceptable for the directive to extend entry to judicial procedures beyond what stems from national law.

Please provide your comments on section 5.5.5 Financial education

In general, there is agreement that financial education is important, however one should also recognize the limits of such an approach.

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

The explanation provided by EIOPA does not take sufficient account of the role of social partners. In the Netherlands, social partners decide on the pension scheme, as pensions are seen as part of terms of employment. Social partners also nominate the board members of Dutch IORPs. Where boards are not paritarian, there is a paritarian stakeholder body (‘belanghebbendenorgaan’) in place. That way, paritarian approval is a characteristic for all pension funds.

Moreover, representatives of members and beneficiaries are represented in a separate body with a consultative and advisory task. In light of balanced decision-making on the basis of all stakeholders’ interests, the board should have the final say. For the purpose of consulting members and beneficiaries there are different types of ‘accountability bodies’, for which elections are held. Any new legislative text should allow for the present and newly proposed Dutch arrangements. In the current advice, the formulation of contributing in a ‘meaningful way’ is unclear and should be further developed. From our perspective, it should not mean that accountability bodies get competences to decide on policy.

Please provide your comments on section 5.5.7 Fit and proper requirements

It seems obvious that members of the board of an IORP have sufficient understanding of the type of pension scheme offered. On the other hand, this advice seems to imply an EIOPA view that DC schemes are inherently more risky for members and beneficiaries than DB schemes, with which we would not agree.

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?

Given the developments in the sector, we welcome a principle-based inclusion of the principle of double-materiality in the prudent person rule.

However, EIOPA should carefully consider the potential impact of such an inclusion in the IORP Directive, in the context of other EU legislation and in particular the SFDR. We would oppose a situation where the proposed amendments in IORP2 would make pension schemes automatically fall in Article 8 SFDR or lose the possibility for IORPs of opting-out under Article 4.

Under article 8 SFDR, the ESAs have included in the definition of 'promotion' situations 'where a financial product complies with certain environmental, social or sustainability requirements or restrictions laid down by law' ... 'and these characteristics are "promoted" in the investment policy'. This promotion could take the form of information, reporting, general impressions, targets in almost any type of document produced by the IORP. And some of these disclosures are actually compulsory under IORP2. Moreover, IORPs are not able to opt-out from reporting on PAIs 'where they consider principal adverse impacts'. It could be argued that under the proposal on double materiality, IORPs should indeed consider (principle) adverse impacts. It is necessary to contract sustainability data providers for PAI reporting and these costs weigh proportionally much heavier on smaller IORPs.

It is clear that the SFDR does not function only as a disclosure tool, as intended, but also has elements of a labeling tool. This creates problems for consumers, but also financial market participants. Currently it is unclear how that debate will continue, but the SFDR will be reviewed. There are voices, such as the French AMF, that want to introduce more elements of labeling and minimum requirements in the SFDR. This might result in restrictions and exclusions of particular types of investments under article 8. This would then automatically become a restriction of the investable universe for IORPs which might lead to lower investment results and therefore lower pensions. We would expect EIOPA to agree that such an outcome would not be desirable given that EIOPA notes on page 173 of the Consultation Paper: "This does not mean to oblige IORPs making sustainable investments or accepting lower risk-adjusted returns, but rather encouraging the IORPs to consider the potential long-term impacts of sustainability aspects."

We feel that drawing the balance between the classical factors of cost, risk, return and in the future the new sustainability factors, should remain a decision for the IORP itself, in order to optimize outcomes for members and beneficiaries.

EIOPA should therefore consider how to avoid involuntary knock-on effects from one directive to another directive or regulation. To some degree this is in the hands of the ESA's who clarified the term "promote" through a Q&A, while the term is undefined in the SFDR.

EIOPA should also consider the balance between on the one hand what EIOPA intends to advise to the Commission on proportionality, and on the other hand what EIOPA intends to advise to the Commission on sustainability, if this last bit of advice will considerably raise administrative burdens on small IORPs.

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))?

In the Netherlands, participants are mandatorily enrolled in the pension fund. Participants are increasingly interested in the sustainability aspects of the investments that the pension fund manages on their behalf. We therefore agree with the principle that pension funds should incorporate the sustainability preferences of participants in the investment policy.

The consultation paper correctly identifies a number of idiosyncrasies of the pension sector that must be taken into account when requiring the incorporation of sustainability preferences. These include automatic /mandatory enrollment, the specific governance structure of the pension fund and the collective nature of the investment policy. While the Netherlands is transitioning to DC, most pension funds will still continue to have one investment policy without investment choices. Therefore, the preferences of members and beneficiaries have to be considered at a collective level as well, which implies a judgment call by the boards of Dutch IORPs.

This means that under the IORP Directive the board of the pension funds should maintain discretion:

- How to gauge preferences. While surveys are becoming very common in the Netherlands, we believe that pension funds should also be allowed to make use of its governance structures. In the Netherlands this includes a specific accountability body (verantwoordingsorgaan), often elected by participants, as well as employee representation in the board. There should be an explicit mention of this possibility in Article 19(1)b.
- How to translate preferences to a single investment policy, while acting in the best interest of members and beneficiaries.

We therefore support the notion that board members should maintain the final say. We, however, disagree with the proposal that EIOPA should issue guidelines to clarify how sustainability preferences interact with other requirements in the prudent person rule. This would likely make the framework too prescriptive and undermine the principle-based nature of the prudent person rule. How to implement the proposed incorporation of sustainability preferences should left up to the board, under the supervision of the NCA.

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))?

We support that the consideration of sustainability preferences should be aligned with the principles of Article 19(1)a and c. The main purpose of a pension fund, as set up by the social partners, is to provide good pensions. The provisions in (a) and (c) warrant that the portfolio as a whole is managed with this aim in mind.

In the Netherlands, the current interpretation of the prudent person principle has not meant that pension funds are curtailed in their ambition to pursue impact investments or divest from sectors with a perceived ESG risk. The problem of the prudent person rule standing in the way of responsible investment is more pronounced or perceived in common law systems. In the Netherlands, there have not been the court cases on this subject. The reference to provisions 19(1)a and c in our perception therefore will not be overly restrictive for the Netherlands.

Moreover, we would support including reference to article 19(1)f. Diversification is a cornerstone of the

investment policy of pension funds. We observe a trend amongst some pension funds to reduce the number of companies in their portfolio from several thousands to several hundreds, in order to be able to better monitor the sustainability impact of these companies and invest accordingly. Because diversification is subject to the law of diminishing returns, this reduction of diversification can be achieved without significant increase of risk in the portfolio.

At the same time, we observe that the investment universe with the highest sustainability credentials, for example Taxonomy-alignment and sustainable investments under SFDR, is still limited. In other pieces of legislations sustainability preferences are defined along these labels, such as in MiFID. This could lead to insufficiently diversified portfolios from a risk perspective. A reference to diversification could help avoid this situation.

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?

Many Dutch pension funds have engagement and stewardship policies. Research into the 50 largest Dutch pension funds found that 84% disclosed concrete results of engagement activities in 2022 (see: <https://www.vbdo.nl/wp-content/uploads/2022/10/22010-VBDO-Benchmark-Pension-Funds-2022-def.pdf>). Engagement plays an important role in the sector's implementation of the OECD guidelines. The efforts on stewardship should be proportional to the size of the pension fund.

At the same time, it is not clear what the purpose or benefits of option 1 are. SRD2 already requires an engagement policy. Requiring the inclusion of the engagement policy in the SIPP does not change the content of the requirements of the SRD2 or leads to a higher level of ambition in this area. This proposal therefore seems unnecessary regulatory burden. While the implementation burden would probably not be very high, we recommend against option 1. Further development of the engagement policy could be tackled as part of a review of the SRD2 and/or the CSDDD.

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	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.4: Other regulatory background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.5: The integration of sustainability factors in investment decisions	<input checked="" type="radio"/>	<input type="radio"/>
* Section 6.6: The fiduciary duties	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.7: Stewardship	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.8: Broader societal goals	<input checked="" type="radio"/>	<input type="radio"/>

Please provide your comments on section 6.5 The integration of sustainability factors in investment decisions

The Dutch pension sector has high ambitions in the area of responsible investing. Key trends include a greater uptake in impact investing (often aligned with SDGs), the setting of carbon reduction targets, more determined engagement strategies, divestments (including fossil fuel) and more dedicated in-house and

outsourced expertise on responsible investment and sustainability data.

Dutch pension funds have set up several sector-wide initiatives to address sustainability risks and the impact of investments on sustainability factors. Most notably, the majority of the Dutch pension sector has worked together with the Dutch government, NGOs and trade unions to implement the OECD guidelines since 2018. A group of large and medium-sized pension funds have implemented climate action plans with carbon reduction targets as part of the Dutch governments climate accords. According to a survey by the AFM, 93% of participants are enrolled in a pension fund that is categorized as Article 8 under the SFDR. A significant number of large and medium-sized pension funds (representing a large majority of participants) have also signed up to the Climate Commitment of the Dutch Financial sector in order to bring the portfolio in line with the Paris Agreement.

At the same time, we observe a heterogeneity of approaches, as well as a divergence in the level of ambition or the comprehensiveness (e.g. the types of assets in scope of the sustainability policy). The size of the pension fund is a strong determinant of this divergence. Larger pension funds tend to set higher ambitions, as higher costs for staff, sustainability products and data can be spread out over a larger population of participants. Another factor is the company or economic sector for which a particular IORP works. Particularly with impact investing, IORPs pay extra attention to SDGs related to the sector of their sponsor(s).

In addition to our response to Q6.1, we make the following observations:

- EIOPA proposes to amend Article 28(2)h to use scenario analysis “where sustainability risks are considered”. This seems at odds with the proposed amendment of Article 19(1)b which would require the consideration of sustainability risks. As a result of this amendment, scenario analysis would become mandatory for all IORPs. Scenario analysis is becoming more common amongst Dutch pension funds, but does require significant resources such as data and modeling which need to be sourced from external providers. This does not seem a proportional approach. EIOPA cites on page 177 of the Consultation Paper the Climate Stress Test Report that presently only 16% of IORPs report using scenario analysis for ESG and sustainability risks. We recommend a “comply or explain” approach.
- The intended effect of the amendment on the remuneration policy is not clear. The current wording may lead to a lot of discussion during the implementation phase about what it means. While the amendment may entail only a reporting requirement to disclose how sustainability risks are taken into consideration, it may be understood as a substantive requirement that these risks should be considered in the policy. Generally, we do not think that sustainability risks are a very relevant factor for the remuneration policy. The Dutch pension fund code caps variable pay at 20%. Variable pay cannot be linked to the financial performance of the pension fund, in order to avoid excessive risk taking. By the same token, the remuneration policy should not set quantitative sustainability KPIs.
- We welcome the alignment of definitions with different other pieces of regulation, such as the SFDR. This is actually a key element for the success of the sustainable finance package and should be reviewed throughout all relevant legislation. Therefore, we support that the IORP II Directive should no longer refer to “ESG”, but rather “sustainability”. This should be reflected throughout the text, including the recitals.

Please provide your comments on section 6.8 Broader societal goals

We agree that the gender pension gap is a problem that needs much more attention and should be solved. We strongly agree with EIOPA on a pension dashboard and pension tracking systems, also for wider purposes than closing the gender pension gap. We feel that more is needed to solve the gender pension gap, also beyond these two suggestions.

However, we question whether the IORP (Directive) is the right place to address solutions to closing the gender gap. The gender pension gap is largely caused by inequalities on the labour market (see OECD: <https://www.oecd.org/pensions/towards-improved-retirement-savings-outcomes-for-women-f7b48808-en.htm>) and solutions should primarily be sought there. Legislative instruments at the EU level can be effective. The 2019 work-life balance for parents and carers directive (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158&from=EN>) stemming from EU social policy (legal base art 153) being a case in point. In the Netherlands, social partners have in some sectors agreed on more than the Dutch legal minimum, which is mainly set by EU directives.

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?

Diversity and inclusion matter and should be embraced. Management bodies of pension funds should be composed such that each member is fit on their own merit and the body as a whole is diverse and inclusive. A diversely composed management board of people with different backgrounds and competences will broaden the perspectives of the board and other decision making bodies.

The proposed new provision in Art. 21 proposes “The IORP shall put in place a policy that promotes D&I in the management or supervisory body”. We question whether this should be ‘or’ and not rather ‘and’.

EIOPA also proposes to introduce an additional principle that remuneration policies and practices shall be gender-neutral. The EU Treaty already states in art. 157 that each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. In addition, the European Parliament very recently adopted the Pay Transparency Directive to further stimulate equal pay through transparency requirements. Therefore, considering the norm of equal pay is a well-established principle, we just need to make sure that this norm is also delivered in practice.

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?

EIOPA rightfully acknowledges that D&I is of societal value and should be cross-sectoral consistent across sectors. When looking at an EU definition, we refer to Principles 2 and 3 of the EU Pillar of Social Rights where gender equality and equal opportunities are well established.

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?

We support this proposal. Pension funds should have a written policy that stimulates and broadens D&I within its management bodies and is reviewed periodically. The D&I policy should have fitting targets with regard to diversity and have a roadmap to reach these targets.

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

	Yes	No
* Section 7.2: Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.4: Some national practices	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.5: D&I in management bodies	<input checked="" type="radio"/>	<input type="radio"/>
* Section 7.6: Reporting on D&I	<input type="radio"/>	<input checked="" type="radio"/>

Please provide your comments on section 7.5 D&I in management bodies

Diversity and inclusion (D&I) matter and stimulating D&I should be fully embraced. We underwrite EIOPA's analysis (p. 199) that D&I goes beyond the gender balance, given that D&I embraces multidimensional aspects. And that diversity alone is not sufficient and an inclusive approach is crucial.

D&I is an aim of societal importance, not just in the area of IORPs, and/or the IORP Directive. For us, the first starting point should be good governance. It is a well-known fact that diversely composed bodies take better decisions. A second consideration could be that governing bodies of an IORP take decisions on behalf of members and beneficiaries, and therefore should be able to represent in some form or other the diversity of these members and beneficiaries, obviously without compromising fit and proper considerations.

We do agree that IORPs should introduce D&I policies not only for recruitment, but also for safety at the work place. Indeed some large Dutch IORPs and large Dutch pension service providers already operate such policies and have made them a priority. It is, according to us, however questionable whether the IORP Directive is the correct instrument for human resources policy.

We believe that introducing D&I in the context of the IORP Directive should start with a clear recognition of the purpose for doing so, which could be reflected in the recitals of the Directive, from which specific articles with obligations could be derived.

We feel that EIOPA starts out with the correct broad definition of diversity, that recognizes that for inclusion quite a few aspects are relevant – including gender - but then takes a wrong turn in effectively reducing the concept of gender to the binary male and female. This happens through the concept of “the underrepresented gender”. The use of the definitive article “the”, turns the concept gender into a binary distinction between only women and men, out of which one is “the underrepresented gender”. We feel that such an interpretation of the word gender, may today not be seen as fully inclusive.

To remedy this, we would propose that there is a need for at least two obligations. The first one could be that IORPs should pursue a broad D&I aim in composing boards, with a reporting requirement. On top of that, more specific and precise quantitative obligations could be introduced, especially on the position of women and men. And for that to also directly refer to the words ‘women and men’.

The present Dutch “Code Pensioenfondsen” (see: <https://zoek.officielebekendmakingen.nl/stcrt-2018-55140.html>) obliges Dutch IORPs to include at least one man and one woman, as well as at least one person younger than 40 years, and one person older than 40 years in their boards. The Dutch Code is currently under review, and this clause is under discussion. Issues are how to open up the categories of diversity, as well as how to set obligations that encourage movement in the right direction. The “Code Pensioenfondsen” has the character of “comply or explain rules”, but also has a base in binding Dutch law. Noncompliance

without explanation would be an infringement of a legal obligation.

EIOPA assumes that by raising the number of women in a management body, the topic of sustainability will be 'better' discussed, because women 'care more about this issue'. We believe this thinking is too limited on the fullness of what a diverse management body will bring to the IORP. Diversity should not be reduced to the prioritization of other specific topics.

Annexes

* Do you have any comments on the annexes?

- ☐ Yes
☒ No

Any other comments

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

- ☐ Yes
☒ No

Contact

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