

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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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

Cross Border Benefits Alliance-Europe (CBBA-Europe)

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Questions to stakeholders

Executive summary

* Do you have any comments on the executive summary?

- Yes
 No

Chapter 1. Introduction

* Do you have any comments on the introduction?

- Yes
 No

Please provide your comments on the introduction.

The Cross Border Benefits Alliance-Europe (CBBA-Europe) is aware that the IORP Directive aims at providing common European minimum standards to pension funds (IORPs), and that its provisions can be always supplemented by additional national requirements. However, considering one of the main (so far: failed) goals of the Directive, which is the promotion of cross-border activities of IORPs and transfers of pension schemes, CBBA-Europe considers that no additional requirement established at national level should represent an obstacle, a barrier or even an excuse from some NCAs to not approve the authorization to the said cross border initiatives. In particular, CBBA-Europe has noticed a serious contradiction with regards to the relationship between the European and national legal frameworks: on the one hand, several member states and stakeholders have been agreeing to reject further harmonization coming from the EU, arguing that such European regulation is not necessary because national IORPs already work well as they are; on the other hand, too many NCAs have complicated, delayed or even blocked the cross border activities of IORPs based in other MS by arguing that those IORPs were not regulated enough compared to their own national requirements. Such mistrust towards pension funds located in other MS represents a clear violation of the EU principle of mutual recognition, which is the basis for the creation of the European internal market as provided by articles 114 and 26 TFEU. And the IORP Directive is precisely based on those EU legal provisions.

Therefore, either no further EU harmonization on European IORPs will occur, and MS will always apply the principle of mutual recognition by accepting IORPs based in other member states to operate in their territories; or, if those MS/NCAs really mistrust the way how IORPs are regulated in other member states, then further EU harmonization will be obviously needed in order to further raise the EU minimum requirements and pave the way to an European internal market for pension funds.

CBBA-Europe considers that in principle the first option (no further EU harmonization for IORPs) would be

the best option. But if the cross-border activities will continue to be hindered by NCAs, then it will not oppose all those actions and initiatives taken at EU level in order to solve, once for all, such issue after twenty years from the first IORP Directive of 2003.

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.

Unfortunately not. CBBA-Europe is quite aware that several NCAs have not made a proper use of the provisions on proportionality provided by the Directive. The present revision might represent a good opportunity to better achieve a proportional application of prudential regulation and supervision of IORPs.

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

- Yes
 No

If yes, do you agree with the proposed new threshold (both 1000 members and beneficiaries and EUR 50 million in assets) under option 1 in sub-section 'Small IORP exemption' of section 2.3.5?

- Yes
 No

Please explain your answer and provide any alternatives.

Yes, CBBA-Europe considers this option as the most advisable. Article 5 of the Directive should be changed. This solution might alleviate several small IORPs. At the same time, such small IORPs, even if exempted by the provisions of the Directive, would not represent a significant financial risk for the European stability. Of course, it shall remain granted (as it is under the current framework) that any IORPs willing to start a cross-border activity, even if small and potentially exemptible from the Directive's provisions, will be fully subjected to the Directive.

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.

In principle, the draft advice is right to take into consideration other elements that are not related to the pure size. However, the action to remove the size might also represent a risk, because from an objective and measurable criterion (the size, indeed), other criteria might lead to strong national differences in interpreting the application of the proportionality principle (and so some or full exemption from the application of the Directive). As an example, some NCAs might be more flexible with their IORPs, while other authorities not flexible at all. Therefore, CBBA-Europe does not consider this option as suitable.

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

- Yes
 No

Please explain why or why not.

According to this option, NCAs will still have a strong discretion. And, as stated in the previous question, CBBA-Europe does not see this room as a good solution when the application (or not) of the proportionality is at stake. In our opinion, the real problem here is that the principle of proportionality has been not fully applied to all its potential in several MS. And that such a principle already offers, as such, a decent level of flexibility by allowing the exemption from some provisions and the application of others. Therefore, CBBA-Europe does not consider this option as suitable.

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?

Please, see above

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'.

Overall, CBBA-Europe agrees that EIOPA determines such conditions based on objective and measurable criteria. Maybe those conditions might not suffice (for example, the typology of investment policies or other aspects like the features of the pension scheme should be taken into consideration, too). Granted that National Authorities might better assess whether IORPs can be defined as low-risk profile or not, CBBA-Europe reiterates that that those criteria should be still determined in an objective way in order to avoid too much discretion to the NCAs.

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.

IORPs managing DC schemes, investing in certain safe categories of assets, carrying out simple activities and structured in a certain way might deserve a different minimum requirement approach as well.

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.

In principle, CBBA-Europe does not support the idea of raising the current minimum standards for institutions that are not low-risk profile IORPs. The IORP II Directive should remain a minimum harmonization Directive. Moreover, option 3 appears to create unnecessary additional burdens on IORPs, for which we do not frankly see the necessity. CBBA-Europe considers that higher requirements might be established by the local NCAs, instead. However, such possibility for NCAs should never represent an excuse, or a way to block or damage the cross-border activities from IORPs based in other member states. Finally, instead of focusing on possible higher standards at EU level, it should be highlighted that often NCAs do not fully apply the principle of proportionality to those IORPs that might apply the Directive only partially because of their low-risk profile and their limited size.

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.

It was mentioned above that some IORPs managing DC schemes, investing in certain safe categories of assets, carrying out simple activities and structured in a certain way might deserve a different minimum requirement approach as well. More importantly, EIOPA might help the NCAs to better apply the principle of proportionality and define it in the national legislations (when this is missing), by taking into consideration several factors (size, risk, complexity). Finally, EIOPA might stress the fact that the proportionality principle

also allows to partially apply some provisions of the Directive and does not imply a black or white choice (either to fully apply all the Directive's provisions, or to fully exempt their smaller or low-risk IORPs).

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.

CBBA-Europe does not see the point of introducing such requirements, considering that the provisions on ORA already imply the also assess the risk in case of material derivative exposure. If needed, article 19 of the Directive might be changed and provide for a maximum threshold on derivative instruments as a percentage of the overall portfolio.

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.

For sure, conflicts of interest should be avoided, and the management of this situations should represent a requirement of the governance of the IORPs. In principle, National Authorities might supervise manage these situations, especially when several operations of the IORPs are outsourced. However, such national powers should never represent an excuse, or a reason to block or damage the cross-border activities from IORPs based in other member states.

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.

As stated in the previous answer, in principle CBBA-Europe does not consider it necessary, as such, to strengthen the conditions of operation for IORPs. Not only because significant evidence of IORPs malfunctioning were not registered so far; but also, because a good reporting system, together with a good governance regulating potential conflicts of interests should suffice.
All in all, the current legal framework, and the objective situation of European IORPs are not, in principle damaging the proper functioning of the internal market and are not jeopardizing the protection of members and beneficiaries. The consultation also mentions that 12% of the cross-border IORPs do not manage domestic occupational pensions in the home MS they operate from.

Here the problem seems to be another: the proper functioning of the internal market for IORPs (and the failure of the cross-border activities) does not depend on strengthening (or not) the conditions of operation for IORPs; but it depends on the difficulties of getting the authorizations to operate at cross-border level, and mistrust, if not real protectionism of some Member States (MS) to accept operations from IORPs based in other MS.

More in general, the argument used to justify a strengthening of the operations of IORPs in order to improve both the domestic and cross-border activities of IORPs seems to be quite weak: the great majority of IORPs have no interest to run cross-border activities. Therefore, such additional EU harmonization should be not used to justify a better functioning of the European internal market. Ad hoc measures might be rather assessed for the sole IORPs planning to start a cross-border business. Some reasoning will be made in chapter 3 of this consultation dedicated to the cross-border activities and cross-border transfers.

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.

CBBA-Europe does not see this need. NCAs are free to request any information to IORPs in accordance with article 50.

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

- Yes
- No

If yes, please provide these suggestions.

A good implementation of XBRL at national level as the only standard for reporting data to EIOPA should suffice. For the NCAs are better placed to carry out national supervision of their IORPs.

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?

CBBA-Europe thinks that in principle a common framework for risk assessment and transparency at the EU level is not necessary. Moreover, the risk profile of an IORP cannot be reduced to a value at risk calculation alone. That being stated, national frameworks should never represent an excuse for NCAs to reject or raise difficulties to IORPs located in other MS to carry out cross-border activities in their territories. The EU principle of mutual recognition should be respected.

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

- Yes
-

No

Please explain your answer.

CBBA-Europe approves this proposal. Professional associations are often involved in creating and managing pension funds at sector-wide level through collective agreements. Therefore, it would make sense to expand the definition of sponsoring undertaking to professional professions as well.

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.

CBBA-Europe agrees with this proposal. International diversification represents a potential opportunity, granted that the IORP Directive is based on the prudent person rule. However, if Member States then decide to impose additional investment requirements and investment rules, those additions should not represent an excuse for NCAs to reject or raise difficulties to IORPs located in other MS to carry out cross-border activities in their territories.

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.

Yes, because those tools improve the international diversification for investments of IORPs. If then Member States decide to impose additional requirements, those additions should not represent an excuse for NCAs to reject or raise difficulties to IORPs located in other MS to carry out cross-border activities in their territories.

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.

CBBA-Europe is not against this proposal, insofar as it will not imply significant additional costs or double reporting.

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

- Yes
- No

Please explain your answer.

The current framework on ORA seems to be already appropriate, as the ORA does consider the risk tolerance limits of IORPs.

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 type="radio"/>	<input checked="" type="radio"/>

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?

According to the Consultation Paper, there are divergent supervisory approaches to assess if IORPs are prudentially sound to operate locally or at XB level; more in general, the CP notes a lack of level playing field in registration/authorization process. CBBA-Europe, which is particularly in favor of the development of cross-border activities of IORPs, considers that the regulatory arbitrage is not happening with regards to registration/authorization process. Moreover, considering the so low number of XB activities in Europe there are no proofs of this potential risk. For sure, the reasons why XB activities are not taking-off do not certainly depend on regulatory arbitrage regarding the registration or authorization process.

Therefore, in the CBBA-Europe opinion, the EIOPA's proposal to reform article 9 by requiring a (EU harmonized?) prudential assessment by NCAs as a condition to register and authorize IORP sounds excessive, especially when presented as a solution for cross-border activities, considering also that great majority of the IORPs act locally in Europe, and are not planning to start any those activities. The consultation also mentioned that 12% of the cross-border IORPs do not manage domestic occupational pensions in the home MS they operate from. It is probably true that some companies chose some jurisdictions as the home state for their IORPs' cross-border activities because these jurisdictions have less

strict prudential requirements, but this argument has little to do with a reform of article 9 on registration and authorization. Here the question should be another: have the cross-border activities based in other less strict jurisdiction created any damages to members and beneficiaries based in another member state(s)? The answer is no. If EIOPA considers that cross-border IORPs should at minimum service pension schemes their home state, CBBA-Europe would not oppose this choice. However, we are strongly convinced that such a change would not unlock the cross-border activities, because the reasons of this failure are (notoriously) other.

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?

According to CBBA-Europe, option 2 (non-discriminatory definition of majority) sounds the most realistic and fair: cross-border transfers would be treated as domestic ones and hence the same EU principle of mutual recognition between national and foreigner IORPs would be fully applied.

We also think that this non-discriminatory definition of majorities requested for domestic and cross-border transfers should be fully applied also to the people who make the decisions on behalf of members and beneficiaries (i.e. representatives of scheme members, instead of individual consent) and to the way how the majorities will be calculated (ex. on the basis of votes cast, instead of the totality of members). To be totally consistent with a domestic/cross-border transfer level playing-field, it might be even assessed if a “majority” should be requested in those member states where no majority will be requested to approve domestic pension schemes transfers.

Ideally, new article 12.3(a) should sound like this: «Approval of cross-border transfers shall be subject to the same majorities defined for national transfers, if any majorities will be requested, including the criteria on how such majorities are calculated, and the ways in which those majorities are represented within the pension scheme”.

EIOPA could hold an updated register of which relevant national requirements for such transfers approvals applicable at each time.

Finally, as also mentioned in several parts of this consultation, the social and labor law applicable to pensions should be consistent and clearly defined by each Member State without requirements related to governance, funding and investments which do belong to the prudential authority of the home Member State.

Industry practice shows that a large part of the cross-border activities/transfers failed due to the majority requirement of all members; a majority of votes cast could be a more feasible solution.

In any case, CBBA-Europe has often declared that member states imposing additional requirements to approve cross-border transfers compared to their national ones did infringe the European rules on mutual recognition and violated the principle of non-discrimination based on the nationality (here: of an IORP), which are the fundamental rules of the European internal market. In other words, no EU member state can have carte blanche in order to unconditionally restrict or block the European internal market rules under the pretext that their legislation is classified as “social and labor law”.

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

First of all, CBBA-Europe agrees with EIOPA’s statement that “with the current anaemic internal market, members and beneficiaries lose out on scale and potential savings of access to a wider IORPs market. This is particularly salient considering the massive issues expected for future Europeans in retirement with the current lack of pensions coverage. The complexity of the system is noted by both NCAs and the industry as a barrier. Not finding another way to foster an internal European market for pensions leaves the system to stagnate further.”

CBBA-Europe welcomes EIOPA's statement that "it would be a missed opportunity to not use the review of the IORP II Directive to look at alternative solutions to grow the internal market for occupational pensions".

CBBA-Europe thinks that the simplification of cross-border activities would have to ensure that IORPs having no need to undertake those activities do not suffer any disadvantages against cross-border IORPs.

CBBA-Europe also supports the idea of a DC pan-European occupational pension through a so-called 2nd regime. As known, such new legal framework is also under discussion within the Occupational Pensions Stakeholder Group (OPSG) of EIOPA. A pan-European occupational pension (PEOP) might cohabit with the cross-border activities provided by the IORP II Directive:

- Cross-border activities provided by the IORP II Directive might cover the DB schemes, and those cases where sponsoring companies and employees will opt for solutions more focused on the local peculiarities and habits of the host state and to leave a wider role to local governing bodies, when agreed by the employer and workers.
- The PEOP, working on a DC basis, might better serve solutions where more harmonization and centralization of the pension scheme will be preferred.

Here below some additional concrete proposals to ease cross-border activities within the new IORP Directive which were not included among the possible options of the present consultation:

In addition to the simplifications proposed by the EIOPA for the notification procedures for those pre-authorized DC plans operating on a cross-border basis, much stronger simplification should be added to the authorization procedures in the initial process of application for a cross-border activity.

In order to tackle this problem, the role of EIOPA should be strengthened and any delays or additional (unjustified) requirements coming from both the home and host states' NCAs should be rejected:

- Tacit-consent in granting authorization should be seriously taken into consideration, considering also that the first IORP Directive dates from 2003, and after twenty year' time, the relevant procedures and mechanisms, together with the applicable SLL of the respective MS, should be knowable and available nowadays;
- With this regard, also the EIOPA should keep a register of the national SLL applicable to the host states and make it available to the applying IORP in case of delays from the host NCAs;
- The EIOPA, after being immediately informed about an ongoing application for a new cross-border activity or transfer, should intervene and, if necessary to make a resolute decision in case of unjustified complications due to the responsibilities of the NCAs involved; If the EIOPA decisions will be not implemented, the EIOPA should immediately inform the European Commission, which, on its turn, might open an infringement procedure against the respective member state;

Finally, staying within the legal framework of a renewed IORP II Directive, an alternative option to be assessed might be a parallel, separated, and preferential corridor of provisions specifically dedicated to those IORPs willing to start a cross-border business. Such a normative core, included in a new specific chapter of the IORP Directive, and not affecting the other IORPs alien to cross border business, might prescribe additional requirements aiming at passing the checks provided by the EIOPA's Supervisory Statement on the sound practices of November 2020, as well as some other EU harmonized aspects that might help to prevent the existing inefficiencies and delays in the authorization process.

Granted that the main framework of the provisions on cross-border activities would not change (legal

competences on prudential rules with the home state, and SLL with the host states), once that those additional requirements will be proved to be enforced by the IORP applying for a cross-border activity, this latter shall obtain automatically the authorization to start its cross-border business in a kind of passporting system.

The necessary checks before issuing the authorization might be directly managed by the EIOPA, which would directly interact with the NCAs of the states involved in the cross border activity, and/or anyway through a sort of supervisory committee made up of the EIOPA and the said NCAs.

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

	Yes	No
* Section 3.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
* Section 3.8 Notification Procedures	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.9 Supervisory Cooperation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.10 Potential learning from other frameworks	<input type="radio"/>	<input checked="" type="radio"/>

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.

CBBA-Europe agrees with the proposal of EIOPA, and more in particular with option 3.

Indeed, more clarity and standardisation of the PBS at the national level would help members to better understand their pension situation and avoid confusion when they are accumulating pensions in different IORPs. Moreover, in a shifting process from a DB to a DC pension environment, some improvements in providing information are useful. Such a comparability, comprehensiveness and improved transparency in the PBS will also help members to get a wider overview of their pension situation when more pension providers are involved, and might definitely help the ongoing EU initiatives to encourage pension dashboards and pension's tracking systems.

CBBA-Europe considers that an EU harmonized PBS model would be not necessary at this stage, as NCAs could better define the templates in accordance with the main features of the national IORPs.

However, CBBA-Europe also stresses the fact that in case of cross-border activities, a double reporting, including two different PBS (one drawn in accordance with the home state's model, and another drawn in accordance with the host states' model) should be prohibited. CBBA-Europe is aware that such a double

reporting was recently required by at least one host member state and represented an additional burden to a cross-border activities with that MS.

Finally, CBBA-Europe welcomes the idea of fostering digitalisation and the idea of layering information.

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

According to CBBA-Europe, considering the primary goal of the PBS, this should not include information on sustainable investments. Information on these matters is anyway already requested by the EU legislation specifically dedicated (i.e. Regulation (EU) 2019/2088 and DelReg (EU/2022/1288), so it should be not included in the PBS. SFDR under the PBS would be unduly burdensome, without adding any added value to members who can already rely on a broad set of sources of information on sustainability matters. Finally, CBBA-Europe notes that there is still uncertainty around the concept, definitions and scope of the definition of sustainable investments, and further clarification will only come in the coming years.

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

Every proposal that might help to better compare risks, costs and returns, impact of inflation, etc. might help members to better make their choices on their investment choices, pension provider and level contributions (if, and to the extent allowed by the pension contract).

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)?

It seems that at the moment there are no other empirical data available on good or less good functioning of the PBS in the EU member states than those which are outlined in the Consultation Paper itself, so it is quite challenging to answer to this question.

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.

Digitalization is fundamental today, but for several reasons (including some age cohorts not familiar with digitalization; some regions where internet connection is scarce or missing, etc.), paper documents should be always available at the requests of the members.

The frequency of provision of PBS might be an issue in case that the PBS will be requested more than once per year. Indeed, pension accrual is a long-term process, and two or four PBS provisions during the same year might lead members to make wrong decisions (short-termism), especially in case of lack of a solid financial literacy. Moreover, a frequent annual provision of the PBS might result too burdensome for many IORPs. IORPs should therefore have the flexibility to determine such a frequency of provision in the interest of their members and according with their internal organizational capacities.

A significant improvement of information layering seems to be fundamental, including the use of interactive elements such as videos, infographics, and images.

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

CBBA-Europe agrees with the proposed additional requirements regarding cost transparency of IORPs as outline in the draft advice. Considering that a great majority of NCAs has not created additional rules, cost disclosure provisions should be specified in the Directive. Comparability of costs is of utmost important for members, especially when those can make choices among different pension providers or investment options. An alignment with other EU regulations such as MIFID II, PEPP, PRIIPs, IDD should be made. Information on costs should be provided in order to make members fully aware of the real pension benefit that they will get net of all costs.

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 previous work made by EIOPA on the methodology to draw projections is definitely a good starting point to improve this information. As stated by the consultation paper, option 1 (minimum requirement on the approach to projections in the PBS) and option 2 (Require the use of projections where applicable in the information to prospective members and during the pre-retirement phase) are not mutually exclusive and they could be combined when this information is voluntarily provided on layering basis by an IORP.

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?

Past performances (as provided by article 37(1)(g) of the Directive) should be always indicated when IORPs members bear the risks and they can make choices, because they help them to make comparisons in different perspectives (IORPs, investment options, performance of asset managers when confronted with the same typology of events like inflation, geopolitical turmoil, financial crisis, etc.).

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.

CBBA-Europe does not really consider additional requirements as necessary. The Directive already includes several provisions that should be sufficient to ensure the appropriate structuring and implementation of the pension scheme.

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.

Long-term risk assessment and risk tolerance of members might be included in the investment rules of article 19(1) complementing the concept that in investment rules of the IORPs must be aligned with "the best long-term interests of members and beneficiaries as a whole". This risk assessment framework might be useful also for members enrolled in IORPs providing DC schemes when those members are in a default investment option and they do not make active choices.

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.

Not really.

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?

CBBA-Europe thinks that the current framework is already quite complete to protect members and beneficiaries. However, in principle it is not against option 1 proposed by EIOPA, if this addition will further protect members and beneficiaries.
For sure, in a DC world, members take more risks when they make their own decisions on investments, and so principle-based a duty of care may help. As correctly stated in the consultation, the duty of care should be implemented in a very flexible way, considering the different features and structures of the IORPs in Europe.

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

The proposed sentence proposed in the consultation might be fine. Flexibility will be of utmost importance in the light of the above.

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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
* Section 4.3 Digitalisation	<input type="radio"/>	<input checked="" 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"/>



Chapter 5. Shift from Defined Benefit to Defined Contributions

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

It is quite difficult to assess whether and to what extent the combined provisions of article 25 (well integrated risk-management system), article 28 (ORA) and 49 (Supervisory review process: SRP) will suffice to offer a sufficiently solid framework that would not require further long-term risk assessments. Probably, more time will be needed before establishing if additional measures are necessary, also considering their costs and benefits to be quantified.

In case EIOPA will advise to proceed with a long-term risk assessment from the perspective of members and beneficiaries, we recommend to formulate it in a broader and principle-based approach. Ideally, further elements might be addressed at national level in order to match the different features of IORPs in Europe, granted that those will not represent any obstacle, barrier or even an excuse from some NCAs to not approve the authorization to the said cross border initiatives.

Of course, the EIOPA's opinion of October 2021 on long-term risk assessment should be taken into consideration as guidance.

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?

According to their possibilities, IORPs should contribute to inform and warn DC members if his / her chosen investment strategy are appropriate or not. Also technology could help (robo-advisors, simulators). In case of clear lack of financial literacy of its members, the IORPs should advise them to choose a default option. At the moment, instead of a formal long-term risk assessment process, it would be more useful to have a supervisory focus on how funds are chosen and the rationale behind the decision-making focus.

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?

It would be difficult to see disadvantages of DC IORPs reporting such information on an annual basis. CBBA-Europe is totally in favor of this need.

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?

CBBA-Europe does not see any disadvantages to this.

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 type="radio"/>	<input checked="" type="radio"/>
* Section 5.3: Background information on Defined Contributions	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.6: Member and/or beneficiary involvement in IORPs governance	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.7: Fit and proper requirements	<input type="radio"/>	<input checked="" type="radio"/>

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?

CBBA-Europe is in favor of option 1 proposed by the EIOPA's consultation, by stressing that the "comply or explain" approach will be the best solution for IORPs. Finally, it should be seriously taken into consideration that several small IORPs should have the possibility to make use of the principle of proportionality in such a complex matter.

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))?

CBBA-Europe thinks that in order to align with Article 19 requirements and meet their fiduciary responsibilities, IORPs should integrate members' and beneficiaries' sustainability preferences into investment decision-making while complying with the rest of investment principles.

We support option 1 proposed by the Consultation in line with the EIOPA advice to amend Article 19(1)(b) of the IORP II Directive by adding the following sentence: "those investment decisions shall reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences and to the extent they are consistent with the investment principles set out in point (a) and (c)"

Members might express their preferences also through their representatives when those are part of the governance of the IORPs.

Beneficiaries should be also put in the condition assess the sustainability preferences.

The SIPP should include a view on the consideration given to sustainability preferences as part of the investment strategy and in that respect, CBBA-Europe supports the approach proposed as part of the 6.6.3 advice.

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))?

CBBA-Europe considers that good returns remain a priority for IORPs. Therefore, sustainability considerations should be consistent with those goals in order to safeguard the prudent person rules and the legitimate members' and beneficiaries' (financial) expectations., CBBA-Europe supports the EIOPA's actions in following Solvency II with regards to sustainability risks and double materiality as part of the prudent person principle.

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?

CBBA-Europe thinks that IORPs could support the principle of responsible stewardship through active engagement and by means of holding investee companies (in case of equity or debt investments) accountable for aligning their business strategies with the EU sustainability goals.

IORPs could request information from their fund managers regarding their voting behaviour at AGMs (in cases where this is legally possible) or at least their voting policies and make them available to their beneficiaries.

Proportionality should be taken into consideration for small IORPs, that could be exempted from direct reporting obligations in view of the reporting being conducted by their service providers.

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 type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>

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?

CBBA-Europe, while seeing great merit in an integrated European approach for reaching a more diverse and inclusive society, notices that in several EU member states there is already a legislation or policies

promoting diversity and inclusion. At the moment, a European binding legislation on this matter might appear as excessive and premature, considering also that many IORPs are very small. In other words, size and internal organization of the IORPs should be taken into consideration in the D&I, as the D&I issues are not just about the risks of the IORP but also about the practical feasibility of these envisaged requirements. Moreover, the fit and proper requirement obviously remains a priority for the management bodies.

A comply-or-explain principle for having D&I on the management board is suitable.

About gender-neutral remuneration, CBBA-Europe reminds that Equal pay for equal work is legislated in Article 157 of the TFUE

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?

According to CBBA-Europe, at the moment EIOPA or other ESAs should first consider the existing legal requirements on D&I aspects before formulating new definitions.

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?

Despite of the fact that the IORP landscape is still very diversified in Europe, it might be advisable to build on standards developed at the European level, as it would allow to control costs of implementation. This might also ensure some minimum comparability of the information reported to the NCAs, also considering that - as stated in the Consultation, “the majority of NCAs do not collect any information on D&I”.

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 type="radio"/>	<input checked="" type="radio"/>
* Section 7.6: Reporting on D&I	<input type="radio"/>	<input checked="" type="radio"/>

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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