

BETTER FINANCE response to EIOPA consultation on technical advice on IORP II review

EXECUTIVE SUMMARY

The European Insurance and Occupational Pensions Authority (EIOPA) consults on its draft technical advice for the upcoming review of the Directive on the activities and supervision of institutions for occupational retirement provisions (Directive IORP II), which governs the establishment and management of occupational pensions schemes throughout the European Union (EU). In its consultation paper, EIOPA asks for stakeholders' insights on various elements of the Directive, some of which are paramount for retail investors as pension scheme participants. Across the various sections of the consultation, BETTER FINANCE's response focuses on **the paramount need to protect the interests of pension scheme participants**: performing pension savings are crucial for avoiding old-age poverty in the context of an ageing population.

In this spirit, BETTER FINANCE would first like to propose to change the terms "beneficiaries" and "members" by "participants". In particular the term "beneficiaries" which is merely a copy paste by EU policy makers of a national British pension law terminology is:

- First misleading as the only IORPs stakeholders who always benefit from the schemes are the commercial providers who get compensated whatever the performance has been. It is not unfortunately always the case for participants, and those participants have always contributed to the IORPs whether directly or indirectly through their plan sponsors;
- Second, it is not considerate and quite patronizing with regard to pension savers, in particular when compared to the legal terminology used by US pension law which more appropriately refers to "participants".

BETTER FINANCE then notes that some pension schemes providers in the European Union still eschew supervision: Recent reports of the upcoming bankruptcy of the European Parliament's supplementary pension fund for MEPs¹, which, being established as a non-profit association under Luxemburgish law, escapes all prudential or conduct of business supervision constitutes a powerful call for a careful review of the scope of the IORP II Directive in order to include all occupational pension schemes, including those provided by associations created by public authorities. Regarding **governance and prudential standards**, BETTER FINANCE is of the opinion that ensuring the safety of participants' pension rights against the risk of IORP insolvency or reduction in pay-outs warrants a cautious approach to exemptions for "low-risk profile" IORPs and allowing professional associations to establish pension schemes. BETTE FINANCE sees in a positive way IORPs investing outside the EU borders and taking advantage on behalf of their members of investment opportunities existing in third countries, although allowing IORPs to invest outside of EU-regulated markets must come with a strong equivalence mechanism to ensure that

¹ Hansens, P. S. Melchior & H. Schumann. (3 May 2023). "Taxpayers risk paying for €300m black hole in luxury EU pension fund", *Investigate Europe*. Available at: https://www.investigate-europe.eu/en/2023/luxury-pensions-european-parliament-bailout/?pk_campaign=mailjet&pk_kwd=EP%20Pension%20Fund%20-%201&pk_source=newsletter (accessed 16 May 2023).

third country markets thus made accessible to IORPs' investments offer the same level of investor protection as EU regulation. BETTER FINANCE also supports granting supervisors the power to require quantitative information from IORPs on a regular basis, as a way to increase transparency, ease regular supervision and facilitate supervisory action where necessary. BETTER FINANCE also notes that prolonged underperformance of a pension scheme constitutes a material risk for participants' pension rights, which calls for extending the purview of supervision to conduct of business.

As BETTER FINANCE's response stresses, it is essential to require that IORPs provide clear, transparent, comprehensive and comparable **information to members** and prospective members in the Pension Benefit Statement and pre-contractual documentation. The ongoing **move from defined-benefits (DB) to defined contributions (DC)** pension schemes entails a fundamental shifting of risk onto participants, which, in the opinion of BETTER FINANCE justifies the enforcement of additional requirements, in particular in terms of long-term risk assessment and reporting of cost and performance information to members. The former is essential to ensure that investment decisions and risk assessments are aligned to the long-term investment horizon of participants. The latter is crucial in enabling sponsors and participants to assess the affordability of pension schemes managed by IORPs and the value for money that these schemes offer.

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? Please explain your answer.

We cannot provide any general answer to this question, as we lack sufficient data. We nevertheless observe that in some national markets within the EU, there have been cases of reductions of ongoing pension payouts as well as internal run-off/stop of new business due to the low-for-long interest rate phase. These cases force NCAs to intervene, which they did in a timely manner. A first conclusion we derive from these observations is that EIOPA must ensure that it receives from all EU member states data with regard to new business of IORPs (number of contracts and average amount of contributions), as well as ongoing payouts (number of contracts and average amount of payouts), cases of reductions of payouts, run-offs and insolvency, all of which are under the supervision of NCAs.

We would like to stress that prudential governance must be complemented by explicit conduct of business supervision, which is particularly important for the enforcement of rules on information to members (see articles 45 and 46(i), related to articles 36 to 44 of the current IORP II Directive). The importance of conduct of business supervision is of paramount importance since IORPs are "financial market participants" who make investments in global financial markets on behalf of their members, and should not be misconstrued as "social institutions", even when they do not pursue profit. The reviewed IORP Directive should therefore unequivocally provide that IORPs are "financial market participants", regardless of their for-profit or not-for-profit nature, and as such are subject to conduct of business supervision by NCAs.

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? Please explain your answer.

We support EIOPA's 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'

and remove the ‘size’ and ‘internal organisation’ criteria. Small size indeed does not necessarily imply small risk: a high-risk profile IORP should be subject to stringent prudential governance and conduct of business requirements to protect their members, regardless of the number of these members or the amount of their investments. The removal of the ‘size’ and ‘internal organisation’ criteria are therefore welcome inasmuch as they lead to enhanced protection for the members of small but high-risk IORPs.

We note that the case of the European Parliament’s supplementary pension fund furthermore calls for a review of the scope of the IORP II Directive to ensure that all occupational pension funds are subject to proper supervision. It is BETTER FINANCE’s opinion, based on OECD’s classification of pension schemes, that whenever the employer supports a guaranteed level of pay-outs (as seems to be the case of the MEPs’ fund), we are in the presence of a DB scheme, with related prudential risks which can result in the employer having to fill the gap between contributions and commitments (as we can regretfully observe in the case of the MEPs’ fund). When the employer happens to be a public authority and said gap is to be filled with public money, proper ex ante supervision is all the more important.

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? Please explain why or why not. Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?

Q2.7: 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? Please explain your answer.

To Q2.4: We support EIOPA’s proposed advice to define a category of low-risk profile IORPs in the IORP II Directive and allow Member States to exempt IORPs in this category from certain minimum standards in the Directive, provided that these exemptions altogether do not result in a significantly reduced level of investor protection for the IORPs’ members against the risks of insolvency of the IORP or reduction of pay-outs to members. As stated in the OPSG advice from January 2022, a more nuanced approach to proportionality should be adopted, overcoming the “all or nothing” logic and providing for “lightened or facilitated application of the provisions” rather than full exemptions (“Advice on EIOPA’s technical advice on the evaluation and review of the IORP II Directive”, EIOPA-OPSG-22-30, p. 2).

In particular, low-risk profile IORPs should not be fully exempted from any reporting and disclosure requirements that are necessary to ensure an appropriate prudential and conduct of business supervision. IORPs categorised as having a low-risk profile should report sufficient information to their supervisors for the latter to control on an ongoing basis that such IORPs still meet the criteria to be considered low-risk and that their investment decisions do not entail risks to their members’ benefits that would be excessive in relation to the reduced level of prudential and conduct of business requirements applied to them.

How EIOPA defines and measures “low-risk” is also very important. Assessing the level of risk of the assets and of the ALM of a pension plan is highly dependent on the time horizon chosen. For example, over the long term a portfolio of diversified listed stocks is much less risky than a portfolio of money market instruments. The reverse is of course true over a short-term horizon. Has EIOPA factored the time horizon in, and does it factor in the negative and exponentially negative impact of inflation on fixed income assets?

To Q2.7: We believe that if the concept of low-risk profile IORPs were to be introduced in the IORP II Directive, those IORPs that would be deemed not low-risk should indeed be subject to standards exceeding the current minimum as set out in the current directive and then support EIOPA's analysis under option 3 of the subsection 'Low-risk IORPs subject to proportionality measures'.

Indeed, proportionality is a two-way street: the principle should be interpreted as warranting lighter requirements for low-risk profile IORPs, but also a regulatory framework that becomes more demanding as IORPs accumulate risk. Ensuring a high standard of investor protection in IORPs, therefore, warrants setting prudential safeguards that grow in line with the level of risk entailed by IORPs' investment decisions. This is all the more important when members do not have the option to exit the scheme should they deem the IORP's investment decision too risky in relation to their own risk preferences.

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 support the proposed advice from EIOPA to introduce an explicit provision in Article 50 of the IORP II Directive empowering supervisors to collect quantitative information from IORPs on a regular basis. Supervisors should have at their disposal a complete set of data on IORPs under their supervision in order to guide and support their action, providing them with an up-to-date overview of market developments and the possibility to observe and react to developing trends that may endanger the interests of IORPs' members.

Furthermore, empowering NCAs to collect quantitative information from IORPs is critical for EIOPA to fulfil its mandate to report on the costs and performances of IORPs across the EU (Regulation (EU) No 1094/2010, art. 9(1)(a)). The lack of available data at the national level indeed constitutes one of the main reasons why IORPs are still not included in EIOPA's costs and performance report to date, resulting in a very incomplete overview of the EU market for long-term and pension savings products.

Sharing EIOPA's analysis of the issue and the potential costs and benefits of the two options put forward in the CP, we support implementing option 1 in the revised IORP II Directive (empowering NCAs) but not option 2 (have EIOPA develop ITS). Giving NCAs the power to require data from IORPs is the most pressing issue while reporting consolidation is a longer-term objective that might benefit from the flexibility the absence of implementing technical standards offers.

In particular, NCAs should collect more data on the actual costs and performances of IORPs: EIOPA's cost and performance report currently only encompasses 5 years of data—which is, of course, a much shorter time horizon than the average holding period of a pension plan—and is only based on premia instead of total accumulated assets of pension schemes.

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

BETTER FINANCE supports the proposed advice to expand the definition of 'sponsoring undertaking' under Article 6(3) to include professional associations or bodies, provided there exists a robust regulatory framework that protects members of pension schemes established by such associations against risks of reduced payouts. We agree that recognizing organisations such as employees' unions, industry representative associations or professional bodies for regulated professions could have beneficial effects for participants.

Recognising professional associations or unions as possible sponsors would provide self-employed individuals, in particular, with a collective body able to negotiate with IORPs the terms of their pension schemes and facilitate participation, as those individuals could pay their pension scheme contributions as part of their membership fee to professional association or union. The same reasoning could apply to SMEs, which could rely on a sectoral industry representative body to negotiate terms on behalf of their whole industry, thereby increasing the bargaining power of members in negotiations with IORPs.

This, however, relies on the assumption that the professional association or body indeed has sufficient professional capacity to negotiate advantageous terms with IORPs, which may not be the case where such organisations are small and do not have sufficient human resources to dedicate to such sponsoring of pension schemes.

Furthermore, as EIOPA notes (cf. CP, p.68), in the case of pension schemes including a mechanism against possible reductions of payouts supported by the sponsoring undertaking, the IORP do not have to hold regulatory own funds. Thus, where a pension scheme is sponsored by a professional association or body, members' payout guarantee would rely on the financial strength of that association or body, which, like their professional capacity, may vary greatly from one such body to the next.

In conclusion, we argue that **the proposed expansion of the definition of 'sponsoring undertaking' is acceptable if and only if it comes with regulatory safeguards** ensuring that members' interests are protected regardless of who the sponsor is. These safeguards may apply to the provider, that is, ensuring that only those professional associations or bodies with **sufficient professional capacity for negotiating terms** can act as sponsoring undertakings, and among those, **only those associations or bodies with proven long-term financial resilience can offer a mechanism against possible reductions of payouts to members**. These safeguards may also take the form of a strong product regulation, that is, a prescriptive set of rules regarding the types of products and the conditions that can be offered as occupational pension schemes, applying to all sponsors and IORPs. Those conditions are in our view crucial to maintain a high level of investor protection under the IORP II framework.

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

We support offering IORPs the possibility of investing their pension scheme members' assets in third-country markets that offer more cost-efficient and performing investment products than those that can be found within the EU and a level of investor protection equivalent to that of EU regulation—in both prudential and conduct of business terms. Allowing IORPs to invest beyond the boundaries of EU-regulated markets must not result in a reduction of investor protection standards. Protecting pension savings is crucial, as the payouts from such savings will constitute an important element of EU citizens' income when reaching retirement age, and underperformance of such investments may result in old-age poverty

We then support the extension of the definition of "regulated market" to equivalent markets in third countries but call for a strengthened equivalence assessment to ensure that only those third-country markets with sufficiently high levels of investor protections are open to IORPs. Similarly and for the same reason, we oppose the inclusion of OTFs and MTFs in Article 19(1)(d).

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? Please explain your answer.

We support the introduction in the ORA of a provision that the risk assessment should take into account the risk tolerance limits approved by the IORP's management or supervisory body.

Such limits reflect the level of risk that the IORP's management or supervisory body deems appropriate, considering the IORP's membership, investment horizon and funding status; taking these limits into consideration in the ORA would increase the consistency of an IORP's overall risk management framework and help better align investment decisions with the membership's risk appetite.

Furthermore, providing an explicit requirement to take risk tolerance limits into consideration in the ORA would force each IORP to benchmark their actual levels of risk to these limits, making it easy for members, board, supervisors and other stakeholders to observe any discrepancies, and forcing the IORP to justify instances in which risk tolerance limits are exceeded.

Chapter 3: Cross-border activities.

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

Even though currently the vast majority of people in the EU contribute to or receive payouts from IORPs in a single Member State, increasing professional mobility, both within and across Member States will make portability of pension benefits across IORPs and across borders a crucial element of an efficient, future-proof regulatory framework.

With this in mind we remind that the Pan-European Personal Pension (PEPP) product regulation was developed (Regulation (EU) 2019/1238): PEPP is intended as an affordable, easily portable voluntary pension product well suited to the EU as an area of labour mobility, where both working and retired individuals change country of residence to enjoy the professional opportunities of the Single Market. We should explore possibilities to build upon the PEPP framework an occupational equivalent that would facilitate transfers of pension rights between IORPs within the same country and across countries to follow the increasingly fragmented careers of younger generations of pension scheme participants.

Chapter 4: Information to Members.

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.

Unfortunately, there are no additional empirical data available on the good or less good functioning of the PBS in the EU member states than those which are outlined in the Consultation Paper itself. In consequence, EIOPA's conclusion may be justified that due to the lack of complaints, the supervisory experiences were "slightly positive" with regard to the use of the PBS (cf. page 103 of CP).

Nevertheless, it is obvious that because the two PBS models published by EIOPA in 2019 are only voluntary, a variety of formats and designs of PBS published by IORPs surely coexist. This "status quo" is probably creating confusion for members and beneficiaries of IORPs taking into consideration that most of them will accumulate pensions with several IORPs during their working career due to changes of employers.

Therefore the comparability, comprehensiveness and transparency of information put together in the PBS should be strengthened for the prospective members as much as possible. Additionally, these objectives shall support the aggregation of pension benefit information from different providers on a national level (e.g. for pension dashboards). Given that—until now—most EU citizens will receive occupational pensions from IORPs only in one member state and thus standardisation at the national level is more crucial than at the EU level, **we agree upon EIOPA's proposal for option 3 and the wording of the advice outlined** (cf. pages 111/112 of CP).

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

Yes, we agree to introduce summary information in the PBS relating to any sustainable investments following to option 1 (cf. key or short-form information on sustainability issues, page 114 of CP). As - for example - the templates of pre-contractual or periodical disclosure for the financial products referred to in Articles 8 or 9 of Regulation (EU) 2019/2088 and Article 6 of Regulation (EU) 2020/852 will encompass six pages each, **it is necessary to use the concept of information layering**. Besides the benefits for members and IORPs already outlined by EIOPA (cf. page 115 of CP), **the pre-contractual information duties of IORPs must be aligned with the relevant EU regulations in this context** (mainly SFDR: EU/2019/2088 and DelReg (EU/2022/1288)). **Therefore we approve the wording of the proposed advice** (cf. page 115 of CP).

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

We agree with EIOPA's conclusion that the information provided by IORPs to prospective members needs to enable suitable choices to be made between the alternatives offered. The information to be given shall include the possibility to compare the essential features of the options, such as risks, costs and returns, and to enable assessing whether prospective members can (financially) bear a decrease in benefits because of the potential for disappointing investment returns. **That is why we propose the following improvement:**

Introduction of an additional alert on long-term reduction of purchasing power because of inflation in:

- EIOPA PBS statement 1 of December 2019: Section 3 on "WHAT COULD YOU RECEIVE WHEN YOU RETIRE", bullet point: "Are you on track for retirement?"
- EIOPA PBS statement 2 of December 2019: Section 2 on "HOW MUCH MONEY COULD YOU GET WHEN YOU RETIRE?", bullet point: "Are you on track for retirement?"

Furthermore, the PBS should provide performance data in real terms in addition to nominal ones: Both projections and past performance data, when communicated in nominal terms only, do not reflect the actual evolution of purchasing power of pensions rights. Including performance data in real terms — as the OECD does in all its pension reports — would address the monetary illusion and exponential growth cognitive biases of members, and enable them to better anticipate the actual purchasing power (real value) of their retirement income, nudging them towards appropriate levels of contributions. Even though there might be some implementation costs for IORPs, the additional information proposed for disclosure should be readily available to the IORPs. **Therefore we approve the wording of the proposed advice** (cf. page 118 of CP).

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)?

Unfortunately, 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 (cf. our comment on Q 4.1). That is why we cannot give a more detailed comment on this question.

At the same time, we would like to underline that pension savers are in dire need of simple, intelligible, and comparable reporting on long-term and pension products across the EU. BETTER FINANCE's annual report showcases the growing difficulty to obtain even the net returns of long-term and pension savings. On charges, it is an almost impossible task.

In BETTER FINANCE's opinion obtaining information **on long-term and pension** vehicles, as well as monitoring them, should not be difficult for non-professional savers. This implies also clearly disclosing actual cost and past performance, and in real terms alongside the less relevant nominal ones so that savers can compare nominal net and real net return (which would serve as a wake-up call to the hugely damaging impact inflation has on their savings).

Also, since pensions are long-term products the information on past performance (Article 37.1.g) and 41.2) should be disclosed on a minimum of 10 years and not 5 years period, with the one for their benchmarks. Already UCITS investment funds and AIFs – with an average shorter recommended holding period - are required by EU Law to disclose a minimum of 10 years past performance together with one of their chosen benchmarks (EU Regulation 2021/2268 of 6 September 2021, articles 8 and 17 bis).

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 agree upon EIOPA's proposal to combine options 1, 3 and 4 (cf. pages 121-123 of CP), which are not mutually exclusive with each other. Digitalisation ought to follow a consumer-centric approach as much as possible. **Therefore it should be an inclusive approach taking into consideration that there are large parts of the population in EU member states who do not have the necessary digital skills and/or the financial means for a full online access.** Additionally there are regions in EU member states where the access to the internet is not yet technically fully implemented (like rural areas).

In order to overcome any possible social divide even for those who have full access to the digital world, **we support EIOPA's approach of supervising more closely the choice architecture or choice environment** as outlined on page 119 of CP. This is especially important when an active choice is to be made by the (prospective) members (cf. EIOPA Technical Advice on Retail Investor Protection of 29 April 2022, Chapter 2: Assessing the Risks and Opportunities presented by new Digital Tools and Channels, page 55, no. 98-100, and page 58). **A principle-based approach may be taken right now, but enhanced supervision by NCAs and EIOPA itself should make clear that more prescriptive measures might be implemented in the future if necessary.** Therefore we agree with EIOPA's proposal of the wording of the advice outlined (cf. pages 123/124 of CP).

The concept of information layering should be used more often, as outlined in our comment for Q4.6 (cf. EIOPA Technical Advice on Retail Investor Protection of 29 April 2022, page 47, no. 84). Additionally new concepts for the digitalization of information documents on life-insurances and private pensions should be used for occupational pensions as well: "Digital disclosures offer great opportunities for presenting information in a more engaging and simpler manner than in paper form. The advantages are, for example, the flexible structure, which allows layering, and application of interactive elements,

such as infographics, videos and images. The use of such tools should aim at promoting good consumer outcomes and not seek to take advantage of behavioural biases" (cf. EIOPA Technical Advice on Retail Investor Protection of 29 April 2022, Chapter 1.2, page 51).

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

We agree with the proposed additional requirements regarding cost transparency of IORPs as outlined in the draft advice (cf. pages 128-130 of CP). They are fully based on the DECISION OF THE BOARD OF SUPERVISORS ON EIOPA'S REGULAR INFORMATION REQUESTS REGARDING PROVISION OF OCCUPATIONAL PENSIONS INFORMATION (EIOPA-BoS-23/030 of 10 February 2023) and on the previous OPINION on the supervisory reporting of costs and charges of IORPs (EIOPA-BoS-21/426 of 07 October 2021).

Issues that are crucial from the perspective of IORPs are included, such as smooth implementation (not earlier than 2025), alignment of reporting requirements between NCAs and EIOPA (uniform classification and definitions of costs and charges) and application of the principle of proportionality (like the exclusion of smallest IORPs from quarterly reporting). **As the majority of NCAs have not developed additional rules, there is a need to specify further these cost disclosure provisions in the Directive.**

In addition, as EIOPA points out, the experience of NCAs shows that requiring cost transparency (reporting and disclosure) based on a look-through approach has a positive impact on the cost levels of IORPs, as it drives costs down.

Besides these crucial issues, **understandability and comparability of various pension products (occupational and private) through cost transparency are of utmost importance from consumers' perspective.** Therefore the **alignment with other financial EU regulations (mainly MIFID II, PEPP, PRIIPs, IDD) should be realized as much as possible.**

Nevertheless in order to avoid information overload in the PBS, the concept of information layering should be used (cf. EIOPA Technical Advice on Retail Investor Protection of 29 April 2022, page 47, no. 84). The current design of cost disclosure in the two PBS models published by EIOPA in December 2019 should not be changed, but a hint should be introduced of where to find more detailed information on the website of the product provider (with a direct link). This approach of information layering should particularly be used in relation to additional cost figures of multi-optional investments (cf. proposed amendments of articles 39 (g) and 41 (2) (b) and (c)).

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

We opt for option 1 as the minimum requirement on the approach to projections in the PBS, but we recommend at the same time to use the concept of information layering in order to voluntarily implement option 2 by an IORP (on the website of the IORP in case that different investment options are offered). As EIOPA outlined, the two options are "not mutually exclusive" (cf. page 135 of CP).

In any case, three performance scenarios should be included (in case of different investment options a kind of "default option" should be chosen for this), and the estimated retirement benefits should be shown in real terms (in order to understand the purchasing power at retirement), and an indication of variable retirement benefit should be included where applicable. It should be noted that these elements are already included in the two PBS models already published by EIOPA in 2019 under the

sections “What could you receive when you retire?” (model 1) or “How much money could you get when you retire?” (model 2).

Of course, there should be as much consistency as possible between the approaches used for risk management and information provision purposes, but flexibility should not be excluded for IORPs. This is all the more important in times of strongly changing fundamental macroeconomic conditions (from a low-interest rate phase to suddenly strongly higher inflation scenarios). Whatever approach might be chosen for the information provision purposes, **most important are clear indications to prospective members, which approach is chosen and which are the underlying assumptions** (cf. comment on Q4.3).

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?

Projections are related to probabilities, but especially prospective members need unequivocal information on performance in order to make “well-informed decisions” about their occupational pensions. That is why BETTER FINANCE is of the opinion that information on past performance of a pension scheme needs to be provided to prospective members, and we propose that this information should cover a backward period of ten years minimum, together with the past performance of their benchmarks, as already required by EU Law for shorter duration investment products (see our reply to Q4.4).

Even though we acknowledge that past performance is not indicative of future performance, this information offers important insights that justify placing it directly in the pre-contractual information documents rather than merely making it available on the IORP’s website. In particular, past performance enables comparing across IORPs the suitability of various investment strategies and the performance of asset managers when confronted with a same set of events (e.g. sudden rise of inflation rates, disrupting geopolitical events, etc.).

Following to article 37(1)(g) of the current directive, information on past performance of pension schemes, where members bear investment risks or can take investment decisions, is part of the “General Information on the Pension Scheme”. Past performance information should be included in the pre-contractual information documents for prospective members and the period covered should be extended to ten years, instead of five under the current article 37(1)(g).

If the minimum requirements outlined following to option 1 (cf. pages 133/134 of CP) are clearly stipulated in this review of the Directive, **any additional voluntary information given by the IORP should be outlined on its website following to the concept of information layering** (for ex. on additional performance scenarios for different investment and/or pay-out options, on long-term effects of changing interest rates and rising inflation on purchasing power, 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.

In the current directive, there are already some crucial regulations in order to ensure the appropriate structuring and implementation of the pension scheme by the IORP which include safeguards and limitations on the design of responsibilities and its “investment rules”. Article 19 (1) (a) stresses that “the assets shall be invested in the best long-term interests of members and beneficiaries as a whole. In the case of a potential conflict of interest, an IORP, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries”. As EIOPA clearly

points out in its CP, not all IORPs are primarily connected to a "social function", others are "established by for-profit service providers" (cf. CP, page 136), in consequence, conflicts of interest may emerge.

Additionally, latest since 2022 we live a period of major macro-economic changes on a global level and especially in the Euro-zone, i.e. IORPs like insurers and all the other categories of financial markets participants are confronted with a dramatic and unexpectedly fast change from an extremely low-interest rate phase, which was expected to continue, to a sudden and massive increase of interest rates and inflation. **These developments constitute a major challenge for any investment strategy by an institutional investor like IORPs and endanger the long-term purchasing power of the payouts for beneficiaries as well.** Besides, several cases of run-off and reductions of payouts by IORPs have been reported by NCAs. Even though inflation may slowly decrease, this fundamental change of global macroeconomic conditions will last "for long", as far as any kind of serious prognosis can be made. In consequence, as EIOPA has pointed out, it is "relevant to introduce requirements to ensure that in all cases, irrespective of the national specificities and type of scheme, schemes are as suitable to the members' and beneficiaries' needs and risk profiles as possible" (cf. CP, page 136). Therefore **these new requirements should mainly be related to the long-term risk assessment used for pension projections and the risk tolerance of the members of the IORP.** For reasons of proportionality, it should be regulated that these new requirements primarily apply to DC schemes when members are allowed to take individual investment decisions.

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.

Under the premise that these new requirements shall ensure that members ought to benefit from the pensions scheme being structured and implemented in a way that reflects their interests and needs, the investment rules of article 19 (1) (a) of the current directive should be formulated more explicitly. **It should clearly be outlined that the investment rules of the IORPs, which must be aligned with "the best long-term interests of members and beneficiaries as a whole", must therefore include the long-term risk assessment and the risk tolerance of their members.**

Guidance on this issue is already given by EIOPA-BoS-21/429 of 07 October 2021, Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes, no. 3.9. The long-term risk assessment in relation to future retirement income should take into consideration:

- assessing the risks for members and beneficiaries using projections of future retirement income;
- comparing the results of the risk assessment with the established risk tolerance of the members and beneficiaries;
- mitigating the risks, where risk tolerance limits are exceeded, most notably through adjusting the investment strategy or strategies in case of multiple options.

The above risk assessment framework is also relevant where IORPs provide DC members with a choice of investment options, in particular in situations where there is a default investment option in which DC members are enrolled if they fail to make an active choice. It ensures that the default investment option matches the needs of the membership.

Last but not least, **the assessment of future returns and risks must be realistic** (cf. EIOPA-BoS-21/429 of 07 October 2021, part: Market-sensitive and realistic assumptions, no. 3.17 and 3.18). In the end, the

aim is to relate the risk and performance indicators to the established risk tolerance of members and beneficiaries (cf. no. 3.29).

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.

Besides the investment rules, IORPs have to take fundamental decisions on the way in which benefits of their investments are to be distributed to the beneficiaries (life-cycling approaches, smoothing mechanisms, basic guaranteed interest rates, profit participation, etc.). It must be assured that the relationship between investment strategy and benefit mechanisms for members and beneficiaries is fully disclosed by the IORPS (i.e., which kind of investment strategy is related to which kind of benefit mechanism, cf. EIOPA-BoS-21/429 of 07 October 2021, Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes, no. 3.22).

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

Yes, we agree that it would be beneficial to introduce a duty of care on IORPs towards their members and beneficiaries, because these requirements should strengthen "the right to a high level of consumer protection, in particular by ensuring a higher level of transparency of retirement provisioning, informed personal financial and retirement planning" as outlined in recital 11 of the current directive. Recital 63 already gives additional hints of the areas of concern which should be included in the requirements of duty of care of IORPs towards their members and beneficiaries, especially "**clear and adequate information** to prospective members, members and beneficiaries to **support their decision-making about their retirement** and **ensure a high level of transparency throughout the various phases of a scheme**" (pre-enrolment, membership and pre-retirement, post-retirement). "In particular, information concerning accrued pension entitlements, projected levels of retirement benefits, risks and guarantees, and costs should be given", and "where members bear an investment risk, additional information on the investment profile, any available options and past performance are also crucial. Information should be adequate to the needs of the user..." That is why **we support EIOPA's proposal to apply option 1 as pointed out on pages 140/141 of the CP (including the proposed advice)**, because **it offers enhanced protection to members and beneficiaries**, while the principle-based nature offers flexibility for NCAs to adapt the implementation to their national specificities. Of course, the principle of proportionality should be applied, if members and beneficiaries have less or even no choice related to investment and pay-out options.

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

The additional requirements of duty of care should be framed as being part of the conduct of business supervision. In the current directive in title V only "prudential supervision" is explicitly mentioned. In order to stress the importance of the supervision of conduct of business additionally to the prudential supervision, the headlines of title V as well as of articles 45 to 47 of the current directive should be amended by including the supervision of conduct of business ("main objective", "scope" and "general principles"). Article 46 (j) should be amended in this way: "duty of care related to information to be provided to members and beneficiaries".

Chapter 5: From DB to DC.

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

In its Consultation Paper EIOPA clearly lays out in chapter 5 the quantitative and qualitative extent of the ongoing shift from DB to DC occupational pension schemes across EU Member States and the significant progress made in the last decade (CP, pp. 144-150). This analysis leads EIOPA to the following conclusion: “The shift from DB to DC schemes in most MS will result in a shift of risk to members resulting in a reduction in the level of protection in occupational pension systems” (CP, p. 150). We agree with this conclusion, especially with regard to the retirement income risk.

This shifting of risk is all the more important in times of rapidly changing fundamental macroeconomic conditions (from a low-interest rate phase to suddenly strongly higher inflation scenarios and interest rates), which put massive pressure on the overall quality of the ORA of each IORP. Therefore concerns about the solvency of IORPs have increased, especially since 2022, with the fundamental risk of reductions of pay-outs for beneficiaries, run-offs or even insolvency of IORPs. The most prominent examples were given by the short but heavy crisis of UK pension funds in October 2022.

The above obviously shows why **the additional requirements of the long-term risk assessment which are formulated in EIOPA-BoS-21/429 of 07 October 2021** (“Opinion on the supervision of long-term risk assessment by IORPs providing defined contribution schemes”), are highly relevant and **should be fully implemented** (especially paragraphs no. 3.3 to 3.5 on “Forward-looking supervision of DC long-term risk assessment”, and no. 3.9 to 3.11 on “Long-term risk assessment in relation to future retirement income”).

This Opinion is highly relevant from a regulatory point of view since as a whole it stipulates in more detail how to implement the provision of articles 25 (3) of the current directive (EU/2016/2341) which stresses: “Where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risk management system shall also consider those risks from the perspective of members and beneficiaries.” Additionally article 28 (2) (e) of the current directive emphasises that the risk assessment shall include “the risks to members and beneficiaries relating to the paying out of their benefits... where applicable: (i) indexation mechanisms, (ii) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom.”

In consequence, we support option 2 (CP, pp.156ff.) asking for the application of EIOPA’s Opinion for DC IORPS with common principles for making pension projections in line with the opinion. Of course, the principle of proportionality should be applied (cf. CP, p. 157, on the balanced approach between collective and individualized choices and risk tolerances for the investment decisions, and EIOPA’s proposal of grouping the plan members; cf. EIOPA-BoS-21/429 of 07 October 2021, no. 3.20).

As a side note, we would like to remark, here again, the importance of ensuring that all occupational pension schemes fall under the scope of the IORP II Directive. Indeed, if regulated IORPs are forced to move from DB to DC, with the related shifting of risk to members and additional long-term risk assessment requirements, there is a risk that unregulated schemes, such as the MEPs’ fund already mentioned in Q2.3 lure employers and employees into shady DB schemes with no proper risk management.

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?

In our comment on Q5.1, we already pointed out the macroeconomic and legal reasons why long-term risk assessments are of crucial importance in the case of IORPs where members can select their investments, mainly based on EIOPA-BoS-21/429 of 07 October 2021, part 3. This relevance is particularly true for:

- Stochastic and deterministic scenarios of asset returns;
- Market-sensitive and realistic assumptions;
- Risk tolerance and other characteristics of members and beneficiaries;
- Types of risk-mitigation techniques;
- Target variables and risk& performance indicators.

We clearly support the approach that even if IORPs and NCAs have to bear additional costs — in some cases — in order to analyse the membership's risk tolerance, in the long-run members and IORPs will benefit from these additional requirements of risk assessment and their more detailed supervision (more equal conditions of competition amongst IORPs, reduced regulatory arbitrage, etc.; cf. CP pp. 156/157).

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?

We fully agree with option 1 whereby NCAs should require DC IORPs to report on an annual basis information on all costs and charges, according to principles, with definitions and templates set out in EIOPA's Opinion on the supervisory reporting of costs and charges of IORPs (cf. pages 159/160 of CP).

The issue of enhanced transparency on costs and charges is related as well to the PBS as to the pre-enrolment General Information to prospective members, particularly of DC pension schemes. EIOPA's advice proposes to disclose "all costs incurred, directly and indirectly, by members and beneficiaries over the previous 12 months, indicating at least the costs of administration and the investment costs incurred in connection with the management of assets and portfolio transactions. These costs shall be shown at least in monetary terms". And there should be added "an estimation of the impact of the costs incurred by members and beneficiaries on the final benefits".

These requirements are in fact not new but substantiate the provisions of the two PBS models published by EIOPA in 2019: in model 1 "administrative costs" and "investment and transaction fees" shall be disclosed; in model 2 at least costs "withheld from contributions" as well as "withheld from assets in your pension account" shall be shown. These requirements are fully based on the Decision of February 2023 and on the previous Opinion of October 2021 of the Board of Supervisors on the reporting of costs and charges of IORPs, in which the "classification and definitions of IORP costs and charges" are clearly outlined.

From the participants' perspective, understandability and comparability of various pension products (occupational and private) through cost transparency are of utmost importance. Therefore the alignment with other financial EU regulations (mainly IDD, PEPP and MIFID II) should be realized as much as possible. Again, in order to avoid information overload especially in the PBS, the concept of information layering should be applied - particularly in relation to additional cost figures of multi-optional investments.

As far as we can see, issues which are crucial from the perspective of IORPs are included herein, such as smooth and long-term implementation and the alignment of reporting requirements between NCAs

and EIOPA. As the majority of NCAs have not developed additional rules, from the perspective of the supervisors there seems to be a need to specify further these cost disclosure provisions in the Directive.

As outlined in the CP the advantages and benefits of transparent cost reporting by IORPs to NCAs largely outweigh any possible disadvantages: “The supervisory reporting of transparent cost data will allow NCAs to assess the **cost efficiency** of IORPs, the **affordability** for sponsors and the **value for money** offered to members and beneficiaries” (cf. p. 158 of CP). In addition, as stated in the Impact Assessment attached to this Opinion, the experience of NCAs shows that requiring cost transparency (reporting or disclosure) based on a look-through approach positively impacts **the cost levels** of IORPs as it drives costs down. For instance, in the Netherlands costs decreased when transparent cost reporting was introduced (cf. CP, p. 127).

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 agree with EIOPA’s proposal for the introduction of a requirement for NCAs to provide a high-level overview of their risk assessment framework, as information publicly provided that is a part of the supervisory review as set out in Article 51(2) (Option 1; cf. CP p. 164). As EIOPA’s Draft Technical Advice for the review of the current IORP II Directive includes a lot of enhanced disclosure requirements for IORPs, it stands to reason that these enhanced information duties should be mutual, especially with regard to compliance goals and clearer channels of communication.

Chapter 6: Sustainability

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

We fully agree with EIOPA’s proposal to adopt option 1 and the draft advice based on it (no. 6.5.3., cf. CP pp. 178-181). The benefits for members, IORPs and supervisors are clearly outlined, and **there is an overarching need for supervisory convergence of all sectors of the financial industry, including IORPs, related to sustainability**. Even though some IORPs may stress their “social function” more than their function as a “for-profit service provider” (cf. CP p. 136), they all are financial market participants due to their ongoing investment decisions on the global financial markets. Therefore “there is no reason to take a different approach to insurance on this issue. Aligning terminology between IORP II Directive, Solvency II and SFDR [shall] ensure consistent language on sustainability to avoid any misinterpretations” (cf. CP p. 179).

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

We fully support EIOPA’s choice for option 1 which aims at “integrating sustainability preferences when IORPs can gauge ESG preferences of the members and beneficiaries. EIOPA can issue guidelines to address the issues that IORPs encounter in different cases depending on the type of schemes or any other specificity.” Of course, the boundaries of the Prudent Person Principle must be respected, and the principle of proportionality should be applied with regard to the distinctions between the IORPs

related to voluntary or mandatory membership and collective and more or less individualized investment strategies.

In contrast to the draft advice no. 6.6.3. we nevertheless advocate that the sustainability preferences of members and beneficiaries should be “leading” the investment strategies of the IORPs only in those cases where individual choices of investment strategies can actually be made by their members. The Consultation Paper correctly points out that the views of the members and beneficiaries “on the desirability of sustainable investments is likely to be diverse” (cf. CP p. 184). Therefore the more the investment strategies are collective, the more the IORPs board is ultimately responsible for the decision-making process and its investment priorities.

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))?

It must be assured that IORPs (like all other financial markets participants) acquire a truly “holistic view of their exposure to risks”. This includes the “consideration of sustainability risks and double materiality as part of the prudent person principle in the investments” on the one hand. On the other hand, it must not be forgotten that the primary purpose of IORPs consists in the accumulation of capital for the long-term payouts of pensions to their members.

Therefore the decisions regarding how strongly sustainability considerations shall be integrated in the investment rules of the IORP must be strictly “risk-adjusted” following the prudent person principle. EIOPA has clearly pointed out that “the security, quality, liquidity and profitability of the portfolio as a whole” has to be ensured, and that compliance with sustainability objectives “...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” (cf. CP p. 173). In consequence the interaction between sustainability considerations and other investment objectives must not be a “deterministic” one but constantly readjusted, based on the specific balance of purely financial and sustainable goals sought by the IORPs’ members, board, sponsors and other stakeholders.

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?

We agree upon option 1 and draft advice no. 6.7.3. (CP pp. 189/190).