06 October 2014

PensionsEurope Position Paper on the proposal for an IORP II Directive

Introduction

On 27 March 2014 the European Commission adopted a legislative proposal[1] for new rules on occupational pension funds (IORPs) in order to "*support the further development of an important type of long-term investor in the EU*".

In its Press Release[2] published on 27 March, PensionsEurope *"welcomed the Commission's commitment to high standards of pension scheme governance and communications, but cautioned that some of the proposals risk creating unnecessary extra burdens for schemes*".

First of all, PensionsEurope welcomes that this proposal does not contain new solvency capital requirements for IORPs. We think it would be very detrimental to the occupational pension sector, the members and the beneficiaries. However we are concerned about EIOPA's upcoming work with regards to the Holistic Balance Sheet approach. Indeed EIOPA is currently working on a Quantitative Impact Study and a pan-European stress-test for IORPs. PensionsEurope reiterates its opposition to the harmonization of solvency capital requirements. That is why we express concerns about the Recital 57 and the Article 75 of the IORP 2 Directive proposal which clearly leave room for potential upcoming capital requirements.

PensionsEurope also welcomes the Directive's improvement on investment rules and the fact that Member States cannot restrict IORPs from investing in long-term instruments that are not traded on regulated markets. Furthermore, we welcome that the Directive proposal provides that the competent authorities of the host Member State cannot lay down further investment rules for assets which cover technical provisions for cross-border activity.

However, PensionsEurope is convinced that important features of the occupational pension sector need to be adequately taken into account in the Directive proposal:

Main issues:

IORPs are first and foremost institutions with a social purpose

As stated by the EU Commissioner on Employment and Social Affairs: "*Pension funds are there — first and foremost — to serve a social purpose*"[3]: IORPs are institutions strongly embedded within national social models and primarily governed by social and labour law. This social purpose is reflected in the triangular relationship between employers, employees and the IORP, often through the involvement of the social partners. IORPs are linked to an employment relationship and often providing for a mandatory membership of representatives of the employer(s), the employees and the beneficiaries in the highest bodies of the IORP (assembly of representatives/members, supervisory board). These features are absolutely essential and should be fully taken into account when regulating occupational pensions.

PensionsEurope echoes the European Economic and Social Committee (EESC) opinion[4] which "*disagrees with the approach to [see] IORPs purely as financial market institutions, which fails to acknowledge and respect their specific circumstances. IORPs are institutions which perform an important social function. They are to a large extent responsible for occupational retirement provision and have become an indispensable addition to public pensions systems. The proposed directive must take account of the key role played by the social partners in establishing and*

[1] Directive proposal available here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014PC0167
[2] PensionsEurope Press Release available here: http://www.pensionseurope.eu/system/files/Press%20Release%2071%20-%20PensionsEurope%20reaction%20to%20revised%20IORP%20Directive.pdf
[3] Commission's Press release available here: http://europa.eu/rapid/press-release_SPEECH-13-32_en.htm
[4] EESC Opinion available here: http://www.eesc.europa.eu/?i=portal.en.soc-opinions.31515

managing programmes and the fact that the underlying principles of their operations have to reflect national social security and labour law".

The application of standardised consumer protection-type of legislation to IORPs focuses on the IORP-members relationship and misses both the specificities of the occupational pension sector and the national design of the pension systems which is driven by national social and labour regulation. We fear that such an approach would entail important costs for employers and thus discourage them to offer pension benefits to their employees. As stated by the European Commission in its White Paper[5]: An Agenda for Adequate, Safe and Sustainable Pensions, we stress the importance of tackling pension issues in a holistic way and optimizing synergies across policy areas.

PensionsEurope firmly believes that the governance provisions need to respect the role of social partners in negotiating pension arrangements and managing pension funds. We deem that a copy and paste approach from legislation of the financial and insurance sector is inappropriate and should thus be dismissed. As underlined by the Economic and Social Committee[6]: *" […] relations between an IORP and a scheme's members and beneficiaries cannot be treated in the same way as relations between a financial institution and its clients (consumers)."*

The special character of occupational pensions needs also to be taken into account in future negotiations of the IORP II Directive. We propose an increasing responsibility of DG Employment and social affairs (EMPL) in the area of occupational pensions and similarly, of the EMPL Committee in the European Parliament. In addition to the ECOFIN Council, the Council of Ministers of Social Affairs should also be involved.

<u>The overall pension system must be considered</u>

When looking at pensions, the overall pension system of a country has to be considered. Occupational pensions can never be looked at without taking into account the other pillars of a national pension system. The organisation, design and establishment of pension systems (therefore including occupational pension pillar) are a competence of the Member States.

Therefore the qualitative requirements need to leave enough room for the different national practices. Information requirements should be tailor-made and contain the necessary information that a member or a beneficiary needs to make well-informed decisions concerning his/her future retirement income.

<u>IORP II should recognise all types of occupational pensions</u>

In the Impact Assessment[7] accompanying the IORP II proposal, the European Commission notes that "*market developments require a regulatory response since the number of Europeans relying on defined-contribution (DC) schemes, which shifts risks from IORPs and employers to individuals, has increased significantly*". Although these types of pension provision exist in some Member States, this is not a general approach for occupational pensions in the entire EU. Moreover, in some Member States, occupational pensions also know a collective approach with either no or only some limited options for the individual. The IORP II Directive should adequately acknowledge the different systems including the collective approach of occupational pension provision, often of defined benefit type, and ensure they can also further develop.

Furthermore, we note that the IORP II Directive should take into account the current developments with regards to pension policy in the Member States. For example, new concepts such as Defined Ambition or hybrid systems/contracts which are currently developed should not be undermined by the new Directive.

[5] Commission White Paper available here: http://ec.europa.eu/social/main.jsp?catId=752
[6] EESC opinion, *ibid.*
[7] The IA is available here: http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52014SC0103

Delegated acts

Considering the diversity of occupational pension systems across the EU and the central role played by national social and labour law, more flexibility should be given to the Member States in order to implement the IORP II Directive. PensionsEurope is opposed to the proposed use of delegated acts in this Directive and thinks the Directive should not leave important decisions (for example the methods to be used for identifying and evaluating risks) to be determined by delegated acts. Elements like risk evaluation and pension communication are strategically so important for the further development of occupational pensions that it is not correct to see them as technical elements only.

Therefore, PensionsEurope calls for a principle-based Level 1 Directive without any kind of further arrangements or clarification by delegated acts of the European Commission giving flexibility for Member States to implement it according to the specificities of their national pension systems. For these reasons, the three envisaged delegations of power to the European Commission in the Directive proposal should not be included within a reviewed IORP-Directive and should instead be replaced by rules providing for sufficient leeway to the Member States on the transposition of the upcoming Directive. Furthermore, the delegations for the adoption of regular delegated acts should not be replaced by a competence for EIOPA to appoint technical regulatory standards

Impact Assessment

We regret that the European Commission did not take more time to provide a sound impact assessment for a Directive that will have consequences for millions of members and beneficiaries, employers, IORPs and competent authorities. In the end, PensionsEurope reminds that the costs will be borne by employers, members and beneficiaries thus lowering the level of pension benefits.

The Impact Assessment which the Commission published alongside the IORP II proposal is not sufficiently reliable. From our perspective this is partly due to the Impact Assessment failing to satisfy the requirements set out in the Impact Assessment Guidelines[8] of the European Commission.

Prudential supervision

Prudential supervision of IORPs should acknowledge that IORPs have a social purpose. They are established in conformity with national social and labour law(s) and are – by definition – linked to an employment relationship, intended to provide a supplementary pension for employees. Therefore, the list defining the scope of prudential regulation stated in Article 60 should not lead to marginalising or undermining national social and labour law(s).

Recast Directive

PensionsEurope understands the proposal for an IORP II Directive is a recast Directive. Therefore, only the changes proposed by the European Commission should be discussed. However, because of changes both in the legal and economic environment since the entry into force of IORP I, we think the following elements from the IORP I Directive are important to modify:

- Recital 20, 29 and 13;
- Article 5 (and the related Recital 15);
- Article 6 (d);
- Article 15 (and the related Recital 27)

[8] The guidelines are available here: http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf

Below, PensionsEurope provides for an in-depth analysis of the Directive:

Recitals

Recital 20:

"Institutions for occupational retirement provision are financial service providers which bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation."

PensionsEurope Comment:

We think the Directive proposal neglects the specific characteristics of numerous IORPs, being mainly not-for-profit institutions with a very important role for social partners. The current proposal (as well as IORP I) categorises IORPs as "financial institutions" (Recital 20) where members are seen as consumers who need consumer protection.

Contrary to a financial product offered to the individual, occupational pensions are an initiative – often collective - of social partners or an obligation by law to participate in a pension fund under the supervision of the social partners, as part of an employer-employee relationship. In many cases they provide for mandatory memberships of the beneficiaries. IORPs act as social institutions which execute the social agreement between social partners. As such, an IORP is not a financial institution but a social non-profit institution which goes to the financial markets to seek the return in order to offer to the members, in the context of the social agreement, adequate benefits at a reasonable cost. In this context, non-for profit especially means that institutions offering occupational pensions have no business model of gaining profits from the contributions paid by the employers and employees.

Therefore we think the IORP II Directive proposal should better recognise the social role of IORPs.

Amendment proposal:

"Institutions for occupational retirement provision are ***pension institutions with a social purpose*** which bear a heavy responsibility for the provision of occupational retirement benefits and therefore should meet certain minimum prudential standards with respect to their activities and conditions of operation. ***Their social function and the triangular relationship between the employee, the employer and the IORP must be adequately acknowledged and supported as guiding principle of the Directive.***"

Recital 29:

"In many cases, it could be the sponsoring undertaking and not the institution itself that either covers any biometric risk or guarantees certain benefits or investment performance. However, in some cases, it is the institution itself which provides such cover or guarantees and the sponsor's obligations are generally exhausted by paying the necessary contributions. In these circumstances, the products offered are similar to those of life-assurance companies and the institutions concerned should hold at least the same additional own funds as life-assurance companies."

PensionsEurope Comment:

Although recital 29 is not part of the proposed changes of the Directive, an adjustment is absolutely necessary due to the changed legal framework for IORPs and life insurance undertakings in the area of additional own funds. Recital

29 relates to Article 17 of the original IORP I Directive. However, the Directive 2009/138/CE (Solvency II) changed Article 17 of the IORP Directive. The Recital therefore does not fit any longer and should be deleted.

In some specific cases, recital 29 is asking for the same additional own founds for IORPs and life insurance companies because of the supposed offering of similar products. For a long time, IORPs and life insurance companies were subject to the same European legal solvency framework (Solvency I) and therefore also had to hold the same level of additional own funds. By the implementation of the Solvency II Directive, the European Union primarily made a clear distinction between IORPs that are falling within the scope of the IORP Directive - including additional own funds according to the framework of Solvency I - and between life insurance undertakings that have to follow the rules of the Solvency II framework (including additional own funds according to Solvency II). There is thus a clear distinction between IORPs and life insurance undertakings in place at the European level that should also be respected within the draft of the IORP II Directive.

Amendment proposal:

For the reasons mentioned above, we propose a complete deletion of recital 29 due to these changed legal conditions.

Recital 57:

"In order to ensure the smooth functioning of the internal market for occupational retirement provision organised on a European scale, the Commission should, after consulting EIOPA, review and report on the application of this Directive and should submit that report to the European Parliament and to the Council four years after the entry into force of this Directive. That review should assess in particular the application of the rules regarding the calculation of the technical provisions, the funding of technical provisions, regulatory own funds, solvency margins, investment rules and any other aspect relating to the financial solvency situation of the insitution."

PensionsEurope Comment:

We have noted that Recital 57 explicitly refers to a review regarding "*the calculation of the technical provisions, the funding of technical provisions, regulatory own funds, solvency margins, investment rules and any other aspect relating to the financial solvency situation of the institution*." As stressed before, we do not see any benefit in harmonising solvency requirements across the EU and warn that this could harm very seriously occupational pension systems.

This also suggests that sponsoring employers and IORPs can expect further substantial changes with possibly major impacts after the evaluation of the Directive in four years' time. Employers are unlikely to commit significant resources to any project if it is likely that the legal environment will change. The uncertainty created by Article 75 and especially by the specifications contained in Recital 57 is likely to mean lower pensions and fewer beneficiaries – which is diametrically opposed to the goals stated by the European Commission in the White Paper: An Agenda for Adequate, Safe and Sustainable Pensions.

Amendment proposal:

We therefore suggest deleting Recital 57 or amend it as follows:

"In order to ensure the smooth functioning of the internal market for occupational retirement provision organised on a European scale, the Commission should, after consulting EIOPA, review and report on the application of this

Directive and should submit that report to the European Parliament and to the Council four years after the entry into force of this Directive. ***~~That review should assess in particular the application of the rules regarding the calculation of the technical provisions, the funding of technical provisions, regulatory own funds, solvency margins, investment rules and any other aspect relating to the financial solvency situation of the insitution~~****."*

Title I – General provisions

Article 5 (and Recital 15) – Small pension institutions and statutory schemes:

"With the exception of Articles 34 to 37 , Member States may choose not to apply this Directive, in whole or in part, to any institution located in their territories which operates pension schemes which together have less than 100 members in total. Subject to Article 2(2), such institutions shall nevertheless be given the right to apply this Directive on a voluntary basis. Article12 may be applied only if all the other provisions of this Directive apply.

PensionsEurope Comment:

PensionsEurope wonders if it is correct to consider the number of members as the one and only criterion. Other criterions such as risks, assets under management or asset allocation could be taken into account.

Article 6 – Definitions:

(d) "retirement benefits' means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death. In order to facilitate financial security in retirement, these benefits usually take the form of payments for life. They may, however, also be payments made for a temporary period or as a lump sum"

PensionsEurope Comment:

We note that there are many differences in the design of the pay-out phase in the EU Member States: In April 2013, EIOPA published a database[9] of pension plans and products in EEA which shows that payment of benefits as an annuity is not the general rule, and that lump sums and programmed withdrawals are also possible in a lot of cases (72,3% and 47,4% respectively).

Precisely to take into consideration the differences as well as the heterogeneous degree of development of the annuities markets in Member States, and admitting that there is no "one-size fits-all" solution for this matter across Europe, we propose to put all the pay-out options at the same level, without giving priority to one over the others. It should be left to the discretion of the Member States whether or not to pay lifelong annuities or a lump sum. This approach would necessarily fit all the domestic solutions, either those where the lifetime annuity is mandatory or those where it is not and, to this extent, no problem of compatibility with current domestic legal framework should

[9] The database is available here: https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html

rise.

Furthermore, as occupational pension is supplementary to statutory pensions, the payment modalities of the occupational pension are highly dependent on the payment modalities of the statutory pension

Amendment proposal:

The following changes are proposed in the definition of retirement benefits:

"'retirement benefits' means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death. In order to facilitate financial security in retirement, these benefits ~~***usually***~~ *may take the form of payments for life~~.~~,* ~~***They may, however, also be***~~ *payments made for a temporary period or* ~~***as***~~ *a lump sum."*

The Recital 13 and 49 should be changed accordingly.

However, we consider the current definition as very complicated. A simpler definition could be as follows:

"Retirement benefits means benefits paid as income during retirement because of old age, death, sickness or disability or cessation of employment. These benefits may take the form of payments for life, payments made for a temporary period or a lump sum."

(i) "home Member State' means the Member State in which the institution has been authorised or registered and in which its main administration is located. The place of main administration refers to a place where the main strategic decisions of the institution's decision making body are made"

PensionsEurope Comment:

We also note that uncertainty could arise from this definition as it is possible to see situations where the place of registration or authorisation and the place of main administration of the IORP are located in different Member States.

(j) "host Member State' means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members or beneficiaries"

PensionsEurope Comment:

PensionsEurope notes that the 'sponsoring undertaking' is not necessarily the employer , that is why we suggest to use the word "employer" instead of "sponsoring undertaking" in the definition of the host Member State. As the definition of sponsoring undertaking has changed, the relevant social and labour regulation is determined by the (ex)-employer.

Amendment proposal:

*"host Member State' means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the ~~sponsoring undertaking~~ **employer** and members or beneficiaries"*

q) "key function", within a system of governance, means an internal capacity to undertake practical tasks; a system of governance includes the risk management function, the internal audit function, and where the institution takes risks due to investment guarantees or biometric risks, also the actuarial function.

PensionsEurope Comment:

We suggest to skip the word "internal". Indeed many IORPs and especially the smaller ones will outsource key functions to professional experts.

Amendment proposal:

"key function", within a system of governance, means a~~n internal~~ capacity to undertake practical tasks; a system of governance includes the risk management function, the internal audit function, and where the institution takes risks due to investment guarantees or biometric risks, also the actuarial function.

Article 12 – Cross-border activities and procedures:

(10) "Member States shall ensure that an institution carrying out cross-border activity shall not be subject to any requirements concerning information to members and beneficiaries imposed by the competent authorities of the host Member State in respect of the members which that cross-border activity concerns."

PensionsEurope Comment:

PensionsEurope highlights that information documents such as pension benefit statement, individal benefit information at the moment of an event (leaving, death, retirement), collective information like transparancy report (information on asset allocation, risks and costs) are currently ruled by national social and labour legislation in some Member States. As information on occupational pensions is linked to social security benefits and national tax rules, it will more respond to the individual's needs if it can be provided by the host Member State.

From a more general point of view, although one of the main objectives of this IORP II proposal is the enhancement of cross border activities, we still notice some important barriers: the fully funding requirement for cross-border IORPs, the differences in social and labour laws as well as the different tax treatment of occupational pensions. Therefore, even if the Directive is a step in the right direction, it is unlikely that it will drastically encourage cross-border activity.

Article 13 (and Recital 24) – Cross-border transfer of pension schemes:

(1) *"Member States shall allow institutions authorised or registered in their territories to transfer all or a part of their pension schemes to receiving institutions authorised or registered in other Member States."*

(2) *" The transfer of all or part of a pension scheme between transferring and receiving institutions authorised or registered in different Member States shall be subject to prior authorisation by the competent authority of the home Member State of the receiving institution. The application for authorisation of the transfer shall be submitted by the receiving institution."*

PensionsEurope Comment:

PensionsEurope emphasises that an efficient system of transfers of pension schemes (as defined in Article 6(b)) is a key condition for the efficiency of collective occupational pensions. A fragmentation of pension promises should therefore be avoided where possible.

We understand that Article 13 does neither refer to individual portability of pension rights or pension assets, nor to an outsourcing activity (for example of the administration). Rather, the Article 13 refers to collective transfer, where the pension promise made under social and labour law is not touched. The Detailed Explanation at p. 6 of the Directive proposal supports this interpretation: "*The institution will operate the pension scheme in accordance with the social and labour law of the host Member State, thereby not changing the level of protection of the members and beneficiaries concerned by the transfer*."

Amendment proposal:

To make this clearer in the Article text, we propose the following addition in the Article 13(2):

"The transfer of all or part of a pension scheme between transferring and receiving institutions authorised or registered in different Member States shall be subject to prior authorisation by the competent authority of the home Member State of the receiving institution. The application for authorisation of the transfer, ***which can only be granted if the continuation of the pension promise and the social and labour law relevant to the pension promise is ensured by the receiving IORP****, shall be submitted by the receiving institution."*

(3) *"Unless national social and labour law on the organisation of pension systems provides otherwise, the transfer and its conditions shall be made subject to prior approval by the members and beneficiaries concerned or, where applicable, their representatives. In any event, information on the conditions of the transfer shall be made available to the members and beneficiaries concerned or, where applicable, their representatives at least four months before the application referred to in paragraph 2 is submitted."*

PensionsEurope Comment:

Requirement of approval – who and how?

1. In pension schemes which are not pure DC, from our perspective it is absolutely necessary that the sponsoring undertaking approves the transfer of the pension scheme. However, the current proposal only provides for approval by the competent authority and the members and beneficiaries, or, where applicable, their representatives.

2. Requiring the individual response of every member and beneficiary is likely to lead to a situation where the transfer will not be made because some members and beneficiaries will most probably not respond. However, maintaining the status quo might in some cases lead to suboptimal member outcomes.

   The objective to maintain the level of protection of the members and beneficiaries in question should be the task of the representatives in the most important bodies of the IORP or in the work force representation. The representatives are likely to have more expertise and can dedicate more time to the decision than the individual members or beneficiaries. Contrary to the requirement of individual approval, the involvement of representatives is likely to lead to more efficiency and better solutions for all involved stakeholders.

3. It should also be clarified that the rights and liabilities of the transferring IORP end with the transfer.
4. Further open questions:
   - What if one member refuses? (no transfer at all? Or no transfer for the benefit entitlements of the member?)
   - Active members often have representatives but beneficiaries do not, does this mean that for them you always need an individual agreement?
   - What is exactly an agreement? Can an absence of reaction be considered as an approval?

Amendment proposal:

In order to address the point 1, we suggest to amend Article 13(3) as follows:

"Unless national social and labour law on the organisation of pension systems provides otherwise, the transfer and its conditions shall be made subject to prior approval by the members and beneficiaries concerned or, where applicable, their representatives. ***When the sponsoring undertaking is partly or fully liable to ensure that the pension promise is met, the application for authorisation of the transfer requires the prior written consent of the sponsoring undertaking.*** *In any event, information on the conditions of the transfer shall be made available to the members and beneficiaries concerned or, where applicable, their representatives at least four months before the application referred to in paragraph 2 is submitted."*

In order to address the point 2 we suggest to amend Article 13(3) as follows:

"Unless national social and labour law on the organisation of pension systems provides otherwise, the transfer and its conditions shall be made subject to prior approval by the members and beneficiaries concerned or, where applicable, their representatives ***in the highest committee of the IORP, or, if such a committee does not exist, by the employee representation****. In any event, information on the conditions of the transfer shall be made available to the members*

and beneficiaries concerned or, where applicable, their representatives at least four months before the application referred to in paragraph 2 is submitted."

Article 15 – Funding of technical provisions – cross-border schemes

PensionsEurope Comment:

The current requirement for cross-border schemes to be fully funded at all times is to be left unchanged. PensionsEurope regrets that the European Commission chose not to go ahead with this reform, which would have removed a major barrier to the development of cross-border pension schemes.

We invite policy-makers to make this change through an amendment to the proposed new Directive.

Title II – Quantitative requirements

Article 20 – Investment rules (also Recital 33):

PensionsEurope Comment:

We support the qualitatively-orientated prudent person principle in this Article.

We welcome that Article 20 (6)(c) has been broadened to include long-term financing (infrastructure) and that new provisions also stress that Member States cannot restrict institutions from investing in long-term instruments that are not traded on regulated markets. However, we do not think it will contribute to a large increase in long term investment.

We also welcome that Article 20 (8) provides that the competent authorities of the host Member State cannot lay down further investment rules for assets which cover technical provisions for cross-border activity in addition to those set out in paragraphs 1 to 6 of Article 20.

However, current drafting points to a general categorisation of all kind of shares as illiquid assets, which does not seem to be the goal. We propose to delete the reference to the word "*shares*".

Amendment proposal of Recital 33:

"As very long-term investors with low liquidity risks, institutions for occupational retirement provision are in a position to invest in non-liquid assets such as ~~***shares as well as in***~~ *instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities or organised trading facilities within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares, in currencies other than those of the liabilities and in instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities or organised trading facilities should therefore not be restricted except on prudential grounds."*

Title III – Conditions governing activities

General comments:

IORPs are strongly embedded within social models and are primarily governed by social and labour law. This social purpose is reflected in the triangular relationship between employers, employees and the IORP and often through the involvement of the social partners. This relationship is fundamental and is not represented adequately in the IORP II Directive proposal. Indeed, the proposal is focusing on the role of the IORP and often omits the employee-employer relationship and the role of the social partners. In numerous Member States, occupational pensions are mainly based on a voluntary commitment by the employer. Therefore, any kind of overcharging or inadequate regulation could negatively influence employers and prevent them from providing good occupational pensions to their employees and thus being counterproductive to the political agenda to strengthen and increase the number of Europeans covered by occupational pensions.

Chapter I – System of governance

Article 22 – General governance requirements:

PensionsEurope Comment:

Although PensionsEurope agrees with the general principles laid down in this Article, it is too prescriptive for a minimum harmonization Directive. We suggest taking a principle-based approach and leave more flexibility to the Member States.

PensionsEurope calls for an appropriate application of the proportionality principle when preparing legislation on the governance of IORPs. Crucially, the application of the proportionality principle should be comprehensive. Therefore it should be made clear that the proportionality principle especially provided for in Article 22(2) should not only apply to Article 22 (1), but to the whole Chapter "System of governance" (Article 21-37).

Amendment proposal*:*

(2) "The system of governance ~~***referred to in paragraph 1***~~ *shall be proportionate to the nature, scale and complexity of the activities of the institution"*

Article 23 (and Recital 39) – Requirements for fit and proper management:

(1) "Member States shall require institutions to ensure that all persons who effectively run the institution or have other key functions fulfil the following requirements when carrying out their tasks:

(a) their professional qualifications, knowledge and experience are adequate to enable them to ensure a sound and prudent management of the institution and to properly carry out their key functions (requirement to be fit); and

(b) they are of good repute and integrity (requirement to be proper)."

PensionsEurope Comment:

PensionsEurope agrees that in order to run an IORP effectively, certain minimum professional standards have to be met. However, the requirements for fit management should not prevent social partners to be member of the administrative, management or supervisory body of an IORP. As stated by the OECD[10], "*the governing body should collectively have the necessary skills and knowledge to oversee all the functions performed by a pension fund, and to monitor those delegates and advisors to who such functions have been delegated*".

Thus, the fit requirements should apply to the administrative, management or supervisory body of the IORP as a whole and not require all individuals to fulfil all the criteria. The fit requirements for individuals would not fit with existing systems of governance such as the UK's system of lay trustees and could also lead to conflicts in Member States where IORPs have to respect the principle of co-determination (also involvement of the employee representatives).

Amendment proposal*:*

(1) *"Member States shall require institutions to ensure that all persons who effectively run the institution or have other key functions fulfil the following requirements when carrying out their tasks:*

(a) *their professional qualifications, knowledge and experience are **collectively** adequate to enable them to ensure a sound and prudent management of the institution and to properly carry out their key functions (requirement to be fit); and*

(b) *they are of good repute and integrity (requirement to be proper)."*

The Recital 39 should be modified accordingly.

Article 24 (and Recital 37) – Remuneration policy:

PensionsEurope Comment:

We agree with the European Commission that it is important to avoid a conflict of interest / principal-agent problem, but the Commission should also recognise that in some Member States, the structure of IORPs is designed in a way to resolve this conflict or even avoid it in the first place. The objectives and content of the proposed text of Article 24 do not fit IORPs which are often not-for-profit and relying on staff from a respective employer (or several employers) to carry out their duties without being separately remunerated by the IORP.

Conflicts of interest and the danger of running excessive risk is mitigated by the structure of IORPs: On the one hand, the social partners are often involved in running IORPs, which helps to avoid conflicts of interest and which should be considered at least in Recital 36. On the other hand in some countries the sponsoring employers have to ensure that the pension promise is met (and are legally liable, if this would not be the case), aligning the interests of the IORP and the sponsoring employer. In this case, there is no conflict of interest which needs to be addressed. That is why we believe the remuneration policy should be left to the competence of the Member States and not be further defined by the implementation of delegated acts by the European Commission.

IORPs have developed in the different Member States alongside the first pillar, and are shaped to a large extent by

[10] OECD guidelines for pension fund governance. Available here: http://www.oecd.org/pensions/private-pensions/34799965.pdf

national social and labour law. The social partners have played different roles in developing the different national systems. That is why the EU should recognise this diversity and set a framework within which good retirement provision can prosper, but leave to the Member States to develop the details of regulation. The Directive should therefore only set the broad framework. It is not necessary that a high level of detail is addressed at the European level. This will ensure that national characteristics are taken into account and thus renders Article 24 (3) unnecessary.

Comment on Article 24 (3) (a), fourth point: IORPs will have problems to comply with the requirement that the remuneration policy shall apply to the institution and to the parties performing the institution's outsourced activities or functions. It will in many cases be impossible for them to ensure that service providers publish their remuneration policy. In addition, this is not even necessary because Article 33 provides in paragraph (3) that governance and operational risk are not jeopardised through outsourcing.

Amendment proposal:

3 (a): "*The remuneration policy shall apply to the institution and to the parties performing the institution' s key functions or any other activities~~, including outsourced and subsequently re-outsourced key function or any other activity~~* ***having an impact on the institution' s risk profile***"

Article 25 (and Recital 38, 40) – Functions – General provisions:

(3) "*Without prejudice to the role of social partners in the overall management of institutions, the person or organisational unit carrying out the key function shall be different from the one carrying out a similar key function in the sponsoring undertaking. On the basis of a reasoned request from the institution, the competent authority may grant an exemption from this restriction taking into account the size, nature, scope and complexity of the activities of the institution."*

PensionsEurope Comment:

We understand the requirement to separate the key functions in the IORP and in the sponsoring undertaking as a mean to avoid a possible conflict of interest. However, the way IORPs are structured means that there is no conflict of interest between those two parties (see also paragraph on remuneration policy). Indeed since the employer has to step in to make sure that the pension promise is met, the employer will be committed to a well-run IORP. A conflict of interest does not exist if the employer is liable and therefore has an interest in a good exercise of the function

In addition, allowing the key functions in the IORP to be performed by the same people who have this function in the sponsoring employer is highly efficient and therefore very much benefits the members, especially when a person performing such a key function for one IORP is performing the same function for other IORP´s belonging to the same employer. It is in effect a way of using economies of scale, which is something the Impact Assessment[11] recognises and promotes.

Therefore this paragraph 25 (3) should be deleted to assign the competent authorities in the Member States the power to define the appropriate conflict of interests regulation, depending on the structure of IORPs in the specific

[11] See p. 22 of part 1 of the Impact Assessment: "positive externalities arising from scale economies".

Member States (for example, in Italy, conflict of interests for pension funds are regulated according to MiFID principles). The Recital 40 should be changed accordingly.

Article 28 – Actuarial function:

1. *"Member States shall require that institutions where members and beneficiaries do not bear all the risks provide for an effective actuarial function to: […]"*

Amendment proposal:

"Member States shall require that institutions where members and beneficiaries do not bear all the risks ***and/or where the institution itself provides cover against biometric risks*** *provide for an effective actuarial function to: […]*

Article 29 (and Recital 41) – Risk Evaluation for Pensions:

2. The risk evaluation for pensions referred to in paragraph 1 shall cover:

(a) the effectiveness of the risk-management system;

(b) the overall funding needs of the institution;

(c) the ability to comply with the requirements regarding technical provisions laid down in Article 14;

(d) a qualitative assessment of the margin for adverse deviation as part of the calculation of the technical provisions in accordance with national law;

(e) a description of pension benefits or capital accumulation;

(f) a qualitative assessment of the sponsor support accessible to the institution;

(g) a qualitative assessment of the operational risks for all schemes of the institution,

(h) a qualitative assessment of new or emerging risks relating to climate change, use of resources and the environment.

PensionsEurope Comment:

PensionsEurope highlights that the Risk Evaluation for Pensions to be made should be more detailed at Level 1 and **should not turn into any form of quantitative requirement**. It should additionally be made clear, that the assessment of the funding needs of the institution (point (b)) and the qualitative assessment of the margin for adverse deviation (point (d)) do not and will not in the end mean an introduction of the Holistic Balance Sheet (HBS) methodology for determining risk based solvency capital requirements, since this would cause immense damage to the whole landscape of IORPs. Currently this is addressed in Article 30 ("*The delegated act shall not impose additional funding requirements beyond those foreseen in this Directive*"), but considering the current work conducted by EIOPA this is hard to believe in the long run.

Provisions in this Article remain unclear and need clarification:

- Point (b) should refer to the funding rules of the Member States.
- Point (f) would be problematic for multi-employer schemes if the assessment would have to be carried out

for every single employer. To make clear that the assessment relates to all employers as one collective, we suggest adding the word "*aggregate*". A similar issue arises with point (g).

- To avoid misinterpretations of point (f), rather than referring to "sponsor support accessible to the institution", it should read "*sponsor support and pension protection schemes*". This would then include the legal requirement of the employer to ensure that the pension promise is met. In addition to the employer, any pension protection scheme needs to be taken into account when evaluating the protection of members and beneficiaries.

- Point (h) "*a qualitative assessment of new or emerging risks relating to climate change, use of resources and the environment*" will be difficult for IORPs to comply with. These are new risks for IORPs and, as with any new risks, it will be difficult to assess them. More importantly, a detailed analysis of risks relating to climate change, use of resources and the environment should only be done by IORPs facing these risks.

In some Member States (e.g. Belgium), IORPs have a "best effort obligation". In such situations, the ultimate responsibility to respect the benefit entitlement is not with the IORP but with the sponsoring undertaking. The IORP can only evaluate the risks of its activities linked to the pension scheme. In this context it is not adequate to require the IORP evaluating the sustainability of the pension scheme.

Amendment proposal:

*(b) "the overall funding needs of the institution**, based on funding rules in the member states**;"*

*(f) "a qualitative assessment of the sponsor support **and pension protection schemes** accessible **on an aggregate basis** to the institutions"*

*(g) "a qualitative assessment **on an aggregate basis** of the operational risks for all schemes of the institution"*

*(h) "a qualitative assessment of new or emerging risks relating to climate change, use of resources and the environment **for those IORPs who face these risks**."*

Article 30 (also Recital 59) – Delegated acts for the risk evaluation for pensions:

PensionsEurope Comment:

PensionsEurope is opposed to the proposed use of delegated acts in this Directive and thinks the Directive should not leave important decisions (for example the methods to be used for identifying and evaluating risk) to be determined by delegated acts. Delegated acts only allow for limited influence the European Parliament, the Council and thus the Member States. It is also unlikely that the affected IORPs will be given appropriate time and space to properly comment and improve the proposed delegated acts. Elements like risk evaluation and pension communication are strategically so important for the further development of occupational pensions that it is wrong to treat them as technical elements only.

We deem not justified to make these important decisions by the process of delegated acts. The Directive should rather leave more flexibility to the Member States when implementing the Directive. In particular for specifications around the risk evaluation it is important to bear in mind the national background – importantly the differences in national social and labour law which lead to different occupational pension systems – and tailor any specifications to

fit the national framework. This includes questions around:

- the legal establishment of the pension promise,
- the complexity of the promise itself and its relations to other pension promises made by the same sponsor,
- the type of financing,
- the risks covered,
- the risk-sharing between employees, the IORP and employer,
- the number of sponsoring employers and their relation with each other,
- the financing and liability constellations,
- the existence and level of protection offered by pension protection schemes for IORPs or their sponsors.

Because of all these issues, a uniform approach for all Member States is not the right approach for regulating IORPs.

We therefore argue that delegated acts are not necessary and more flexibility for the Member States is necessary. The broad framework should be set on Level 1 and then leave it to the Member States to develop the details fitting their national systems.

Amendment proposal:

We suggest deleting the Article.

Chapter II – Outsourcing and investment management

Article 33 (also Recital 44 and 54) – Outsourcing:

PensionsEurope Comment:

We agree that competent authorities should be informed about the outsourcing of critical or important activities but it is not clear what is meant by "any other activities" and "important developments". These terms are too vague and may lead to extensive information requirements. It is disproportionate and inefficient to notify competent authorities of any outsourcing. Therefore, this provision should be confined to outsourcing of key functions.

More principally we think that relating this notification obligation to material developments (in the scope of the outsourcing relation) would be preferable (instead of relating this obligation to the outsourced functions and activities).

Amendment proposal:

In Paragraph 1, only the outsourcing of "*management of those institutions*" is admitted. In our view , outsourcing of "*key functions or any other activities*" should be possible (as already included in paragraph 2):

*1. "Member States may permit or require institutions located in its territory to entrust management**, key functions or any other activities** of those institutions, in whole or in part, to other entities operating on behalf of those institutions".*

In Paragraph 6, we suggest removing the reference to "other activities":

*"6. Member States shall ensure that institutions notify, in a timely manner, competent authorities in advance of any outsourcing of key functions **~~or any other activities~~** as well as of any subsequent important developments with respect to the key functions **~~or any other activities~~**."*

Chapter III – Depositary

Article 35 (also Recital 45) – Appointment of a depositary:

"1. For each occupational pension scheme in which members and beneficiaries fully bear the investment risk, the home Member State shall require the institution to appoint a single depositary for safe-keeping of assets and oversight duties in accordance with Article 36 and 37.

2. For occupational pension schemes in which the members and beneficiaries do not fully bear the investment risk, the home Member State may require the institution to appoint a depositary for safe-keeping of assets or for safe-keeping of assets and oversight duties in accordance with Articles 36 and 37."

PensionsEurope Comment:

PensionsEurope stresses that Member States should have the competence to decide to make the appointment of a depositary compulsory.

In several Member States, IORPs outsource in practice several activities and functions - such as asset management - to an external institution. When this institution would be exercising these activities by means of an asset pooling structure, this institution will (on the basis of the AIFMD-directive) also be obliged to appoint a depositary (for each fund involved in the pooling structure). Introducing an obligation to appoint a depositary also for the IORP would turn out to be an obligation which is both "double" (in addition to the already existing depositary-obligation for the external institution) and meaningless (because on the level of the IORP there will be nothing left in which a depositary could play a role). Taking this into account, an exemption from the requirement to appoint a depositary should be granted to pension funds which have already outsourced their activities to external institutions which have received a AIFMD-license.

PensionsEurope also points out that cost is an important consideration, especially at a time when Member States such as the UK and bodies such as EIOPA are inquiring in the charges paid by members of pension schemes.

Finally, it should also be taken into account, that in some Member States – e.g. in Germany – certain assets may be

kept in a safe inside the resident building of the IORP (this is e.g. common practice for registered bonds, so called "*Namenspapiere*" in Germany, or German mortgage loans). Of course the Member States may prescribe, that these safes have to obey to certain security criteria and that people administering the IORP do not have sole and uncontrolled access hereto. But it should at least be possible to continue with this practice of keeping certain kinds of assets, this would otherwise cause unnecessary additional costs for IORPs.

Amendment proposal:

(1) "For each occupational pension scheme in which members and beneficiaries fully bear the investment risk, the home Member State ~~shall~~ ***may*** *require the institution to appoint a single depositary for safe-keeping of assets and oversight duties in accordance with Article 36 and 37."*

The Recital 45 should be amended accordingly.

(7) "A depositary shall not carry out activities with regard to the institution which may create conflicts of interest between the institution, the scheme's members and beneficiaries and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the scheme's members and beneficiaries ***and to the administrative, mangagement or supervisory body****."*

Article 36 – Safe keeping of assets and depositary liability:

5. Where no depositary is appointed for the safe-keeping of assets, institutions shall, at least be required to:

(a) ensure that financial instruments are subject to due care and protection;

(b) keep records that enable the institution to identify all asets at all times and without delay;

(c) take the necessary measures to avoid conflicts of interest or incompatibility;

(d) inform the competent authority, upon request, about the manner in which assets are kept.

PensionsEurope Comment:

In addition to our remarks regarding Article 35, paragraph 1 we recommend that, when the exemption as proposed in these remarks would indeed be granted, the same position should be taken in the context of the provisions (i.e. Article 36, paragraph 5) which have been proposed with regard to situations in which no depositary has been appointed. This would be logical because these provisions would also have no added value in situations in which no depositary has been appointed (and in which the pension fund concerned has to fulfil similar functions itself).

Title IV –Information to be given to prospective members, members and beneficiaries:

PensionsEurope is in favour of good communication:
PensionsEurope's members are currently providing good quality information to their members and beneficiaries at Member States level. We acknowledge this information may be improved but we do not think that a fully standardised document at EU level is the correct means to address the challenges that the occupational pension sector in Europe may face. The current proposal is particularly inappropriate, because the information requirements

are copied from investment products, and therefore do not consider the particular features of second pillar pension provision.

Besides, we also note that numerous initiatives on information disclosure have taken place at Member States level and that some of them are moving towards more simplified, understandable and layered information. We think the EU should take advantage of this rather than harmonising the information requirements through the proposed Pension Benefit Statement (PBS).

Furthermore, according to PensionsEurope, the PBS would not be in line with EIOPA's opinion[12] on disclosure of information which advices to use different layers of information as well as references to other sources of information. As stated in the EIOPA report, "*just providing sufficient legally and technically relevant information has proven not to be effective, and can even be counter-productive*". Moreover, we question the feasibility of producing the PBS on two pages when it takes six pages of the Directive to set out what should go in it.

Transparency and information are important but should add value for members:
We agree that transparency and adequate information for members are an important part of good occupational pension provision. However, when designing new information requirements, we think the value added for members and the related costs should be the guiding principles.

The value added for members depends to a large extent on whether the benefit statement contains the information which is relevant for members. However, what the key relevant information is will vary across the EU. The main reason for this is the national social, labour and tax law. In Germany for example survivor's pensions and invalidity benefits are often part of an occupational pension. Following the benefit statement as described in the Directive proposal, this should not be mentioned at all.

The role of the employer:
Occupational pensions are often based on a voluntary commitment by the employer - although we obviously acknowledge that there are also Member States in which participation in an occupational system is required by law. Therefore, any kind of overcharging or inadequate regulation could negatively influence employers and prevent them from providing occupational pensions to their employees and thus being counterproductive to the political agenda to increase the number of European citizens covered by occupational pensions.

The focus on DC in the proposed IORP II Directive is wrong in particular for collective schemes:
We acknowledge that Defined Contribution (DC) schemes are growing in the EU. However, this is not the case in all the Member States. The one-size-fits-all approach proposed by the Commission leads to the application of individual consumer-type Key Information Documents to all members regardless of the type of pension promise. The proposed PBS covers all types of schemes (DB, DC and hybrid), while they clearly bring different benefits, choices and risks to the members. The PBS is also supposed to cover both individual and collective schemes – even though they are very different in their respective structures.

Conclusion - more flexibility for the Member States is needed:
To avoid both unnecessary information disclosure and the related costs, we propose that the Member States get more flexibility to tailor the information requirements to fit their national systems. The Directive should focus on best practice approaches or principles rather than on details. Then each Member State should be able to decide on national requirements based on the type of the pension promise both in regards to the DB-DC spectrum, as well as whether they are organised on an individual or collective basis. This approach would keep the essence of the PBS and would enable necessary flexibility for Member States.

[12] Good practices on information provision for DC schemes (EIOPA, 2013):
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Report_Good_Practices_Info_for_DC_schemes.pdf

Chapter II – Pension Benefit Statement

Article 40 to 53 (also Recital 46 and 48):

PensionsEurope Comment:

In Article 42 (length), we question the need to fit all the information within two pages. We warn that providing the information required in two pages may not be feasible in some cases. We understand the statement should be concise and easy to read, but the clarity and the quality of information provided should not be related to a specific number of pages. We note that in Member States such as the Netherlands, the pension sector and supervisor are working on an easier format, with more limited information, giving members the option to acquire more information if and when needed and relevant. Sending too much, also irrelevant information does not improve transparency and understanding.

In Article 43 (medium), besides provision of the pension benefit statement by means of a website it should be explicitly mentioned that the intranet of the employer is also an accepted durable medium for this purpose for those employees with access to the intranet.

In Article 46 (personal details) the reference to the retirement age is relatively vague. It could for example refer to the legal retirement age or to the age from which the first pillar pension can be claimed without reductions. We understand that this should not be the age of retirement specified in the pension promise.

For example German labour law stipulates that those who receive a statutory pension are entitled to receiving their occupational pension based on the entitlements accrued. However, it is not clear which age should be used in the pension benefit statement. Recent reforms have made it possible for those with a very long employment history to take retirement from 63 (increasing over the next years to 65) rather than normal retirement age, which is currently being increased to 67. It is also not clear what should be used if the IORP member does not beneficiate from the first pillar pension system.

- What the best projection age for the members and beneficiaries is will vary across Member States. It will depend on the normal retirement age and the relation between the first and second pillar. We cannot imagine a sensible provision at EU level and would therefore suggest leaving the decision about an illustration of any kind of (statutory) retirement age within the pension benefit statement up to the Member States.

In Article 47, it would be impossible for industry-wide IORPs to name all relevant employers in the PBS. In some sectors, membership in the IORP is not linked to a single employer, which means that an employee can built up one claim by working for a number of employers in the given sector. In that case there is not a single employer; we therefore suggest asking for the current or most recent employer. In addition, the IORP should be in a position to provide upon request of the member a full list of sponsoring employers.

Amendment proposal:

Article 47(3): "*the name of the sponsoring undertaking* ***or the current/most recent employer***"

Article 48 - Guarantees

PensionsEurope Comment:

Regarding Article 48(1) (a) we welcome that the reference is made both to the IORP and the sponsoring undertaking. Only referring to the IORP could lead to members and beneficiaries drawing the wrong conclusions.

Article 48(2) (b) requires that information on the current level of financing of the individual entitlements should be provided. Most importantly, the focus on the member's accrued individual entitlements does not fit collective systems. If systems are run on a collective basis, the reference point should not be the individual, but rather the collective level.

We expect the information around guarantees to be complex and difficult to explain in a statement which is only two pages long. In addition, it is unlikely that this information will change over the years. Therefore it could be reasonable to include an explanation in the "information to be given to prospective members" (Article 55). The yearly pension benefit statement could mention the type of guarantee and refer back to the "information to be given to prospective members" for the explanation. However and as explained in comments of Article 55, it should be possible to provide this information to employees who are automatically enrolled shortly after they joined the scheme.

Amendment proposal:

Article 48(1) (a): […], "***indicating which guarantees are taken by the institution and which by the sponsoring undertaking or the (ex) employer."***

Article 48(2) (b): *"the current level of financing of the member's accrued individual entitlements* ***or reserves"***

Article 48(2) (c): *"mechanisms protecting accrued individual entitlements* ***or reserves"***

Article 49 – Balance, contributions and costs

"1. With regard to balance, contributions and costs, the pension benefit statement shall indicate the following amounts expressed in the currency relevant for the pension scheme:

(a) the sum of the costs deducted from the gross contributions paid by the sponsoring undertaking, where applicable, or by the member over the past twelve months, or, if the member has joined the scheme less than twelve months ago, the sum of the costs deducted from their contributions since joining;

(b) the sum of the contributions paid by the member over the past twelve months, or, if the member has joined the scheme less than twelve months ago, the sum of their contributions since joining;

(c) the sum of the contributions paid by the sponsoring undertaking over the past twelve months, or, if the member has joined the scheme less than twelve months ago, the sum of the contributions paid by the sponsoring undertaking since the member joined;

(d) the balance on the date of the pension benefit statement calculated in one of the two following ways depending on the nature of the pension scheme:

(i) for pension schemes that do not provide for a target level of benefits, the total sum of the capital accumulated by the member, expressed also as an annuity per month,

(ii) for pension schemes that provide for a target level of benefits, the accrued individual entitlements per month.

(e) other contributions or costs relevant to the member such as transfer of accrued capital;

(f) the costs referred to in point (a) broken down into the following separate amounts expressed in the currency relevant for the pension scheme:

(i) costs of administration of the institution;

(ii) costs of safekeeping of assets;

(iii) costs related to portfolio transactions;

(iv) other costs.

2. The 'other costs' referred to in paragraph 1 (f)(iv) shall be briefly explained where they account for 20% or more of the total charges."

PensionsEurope Comment:

PensionsEurope acknowledges that transparency with regard to costs of pension systems is crucial. However, this Article should acknowledge the diversity of occupational pensions across Europe: although the disclosure of costs is an important feature when individually choosing a DC pension scheme, it is less useful when employees are automatically enrolled in a scheme with no investment choice and no possibility to move to another IORP or when the benefits are guaranteed (DB plans). To take this into account, the Article should be replaced by general principles.

The diversity of IORPs makes a strong case against harmonisation at the European level. Member States should rather be given the scope to transpose the Directive according to the characteristics of their IORPs. Because of these problems we suggest to keep the current requirements for pure individual DC schemes but leave it to the Member States and their competent authorities to put in place specific rules which fit their national systems.

The disclosure of costs can be an important aspect but it is not as relevant when individual members do not have a choice in relation to the action they can take. There is no added value of cost information in the case where the benefits are independent of costs. Also, in many cases, the sponsoring undertaking supports the IORP by carrying out some of its administrative functions. This is very often done without imputing costs to the IORP. As a consequence, it seems difficult to accurately compare the costs of different IORPs.

We therefore call for an adequate treatment for DB and hybrid schemes and ask for an exemption from the requirements for collective schemes where members do not have a choice as to whether they are enrolled, the type of scheme they are enrolled in and where the employer bears the costs. The costs in these schemes tend to be monitored by a supervisory board and any profit goes towards the members and beneficiaries. If this is not the case, the competent authority should have the power to require that the members and beneficiaries are provided with more information.

We do not see the additional value the proposed cost breakdown in Article 49 (1)(f) would bring for members and beneficiaries and how IORPs operating on a collective basis could comply with this requirement. We therefore suggest deleting Article 49 (1)(f).

As suggested above, the rest of the Article should be replaced by principles. The diversity of occupational pensions across the EU will otherwise lead to a lot follow up questions:

- Overall, Points (a) to (f) do not make sense for industry-wide funds which are organised based on the principle of collective equivalence. These requirements should be replaced with relevant requirements for these types of IORPs.
- The Article 49(d) is particularly irrelevant when the occupational pension fully depends on the first pillar pension provision. For example in Finland, one can say that occupational pension does not exist by itself because the accrued occupational pension depends on the first pillar pension accumulated. The amount of occupational pension in DB-pensions does not exist separately from first pillar pensions so giving accurate information on occupational pension is not only very expensive, it is also quite useless to a scheme member because it only gives balance on the capital accumulated on current year although the pension benefit might ultimately be equal to zero few years after.
- There are many cases where the costs may not be individually distinguishable by the IORP because they are mainly paid by the sponsoring undertaking .
- The suggested breakdown does not make sense at all for those IORPs where any surplus benefits the members - particularly where they have no choice of system.
- Regarding the employer contributions, we would like to point out that they do often not have individual accounts (this is for example the case in Finland); it is therefore difficult in special cases to list the employer contributions for each individual. Similarly it is not possible for this type of scheme to determine the costs either on an individual or on an absolute level. The only data available would be a percentage for the IORP.
- It is not clear to us why there is a split between "costs of safekeeping of assets" and "costs related to portfolio transactions", and we doubt that this distinction is feasible in practice and – in the case of DB schemes, especially with mandatory memberships – we do not see any additional value in providing this information, but only increased and unnecessary costs, that would have to be paid by the employer and/or the beneficiaries.
- In some Member States, the employer supports the IORP by carrying out administrative functions for the IORP. If this is done without billing the IORP, as is often the case, it will be difficult to compare the costs of different IORPs.
- The way benefit information is defined in this proposal of PBS is not adequate for lump sum plans.

To keep the information as meaningful as possible but still manageable to digest, we suggest using percentage figures to show cost. This would mean that no distinction would be necessary between the costs of membership during a whole year and the costs for a shorter period (as stated under (a)). In addition, we suggest the part on costs should at least not apply to schemes where the employer is the sole contributor or bears all the costs of the pension scheme or where the membership of the beneficiaries is mandatory.

Article 50 – Pension projections:

PensionsEurope Comment:

It is important that the PBS captures information which fits the pension promise given. Crucially, this means that the pension projection should mirror the characteristics of the pension promise.

- We would also like to stress that many details are only relevant for a few systems – the Article is too static to capture the variety of IORPs across the EU. One example is Article 50 (2) which provides that future wages have to be taken into account when making pension projections. This is mostly relevant for final pay schemes, which are declining.
- To solve this, we propose that the Directive develops a high level framework, which allows for adaptions on

the national level. The relevant competent authorities can then take care that only relevant information is passed on to the members and beneficiaries to avoid information overload.

We agree with the Commission that inflation is an important factor when thinking about retirement income. However, adjusting given figures for inflation leads to very high (in fact: inflated) numbers, which might mislead members and beneficiaries. Unfortunately, we do not have a solution for this problem.

This Article also poses a serious risk of incompatibility with legislations of other countries which already oblige to provide members with information about pension projections. This is the case, among many others, in Spain where there is a draft regulation, expected to be passed in the following weeks, that obliges both Social Security System and 2nd and 3rd pillar pension funds to provide citizens with a pension projection, but with different technical and financial assumptions than those set out in Article 50[13]. Also in Belgium national social and labour legislation requires a pension projection in case of defined benefit plans, this projection is based on current salaries and current and future service years. Taking a different approach at EU level makes it even more complex for members to understand their retirement benefits.

Article 51 – Investment profile:

PensionsEurope Comment:

Generally we would like to point out that this Article does not fit collective schemes where membership is mandatory for employees and where members do not have investment choice. In this type of scheme, members are often represented in committees within the IORP and the employer stands in for the pension promise made. Members and beneficiaries have access to the information on investment profile through the statement of investment policy principles.

We think it is important to channel the information where it is needed: to those who can take decisions and therefore need to have adequate information. If a member or beneficiary does not have the option to change the investment profile, information on it is at best a "nice to have", in the worst case it has a misleading effect. In the latter case, such descriptions only increase costs for the sponsoring employer and lead to information overload for the members and beneficiaries.

Furthermore, PensionsEurope is against requiring introducing a synthetic graphical indicator of the risk and return profile (Article 51(3)). Participants do not understand this kind of information, and for some pension funds it is not possible to provide this information on an individual basis.

Amendment proposal:

To clarify to which IORPs this a Article applies, we suggest the following introductory sentence:

"The following Article does not apply to IORPs where members do not have an investment choice, even if they bear part or all of the investment risk."

[13] As stated several times in this paper, PensionsEurope is not in favor of delegated acts in this Directive proposal. However, we take note that the method of calculating the amount should be determined by delegated acts (Article54).

Article52 – Past performance:

PensionsEurope Comment:

We think this type of information can be very misleading for member because we doubt whether past performance for DB plans does say anything about the pension benefit.

Amendment proposal:

Similar to Article 51 we suggest limiting this requirement to IORPs where members and beneficiaries as an individual can influence the investment decisions which have a direct impact on their retirement benefits. Otherwise these requirements will lead to additional costs – which will be borne by members and beneficiaries and/or the sponsoring undertaking – without providing additional value.

Article 53 – Supplementary information:

PensionsEurope Comment:

Any supplementary information needs to fit the pension promise in question as well as the national social and labour law which governs the promise. We therefore suggest that the Member States define what is understood under "supplementary information".

Amendment proposal:

Because of the wide variety of IORPs across the EU, Article 53 should be supplemented with the clause „***where applicable***".

Article 54 – Delegated acts on the PBS:

PensionsEurope Comment:

As stated in the general remarks, Member States should be given the necessary scope to tailor requirements taking into account the differences between DC, DB and hybrid schemes, the differences between collective and individual schemes, the different role of social partners and employers and the differences in social and labour laws. The Commission should therefore not be empowered to adopt delegated acts. Rather, the Directive should enable the Member States to transpose the Directive in a way which fits their national schemes.

Chapter III –Other information and documents to be provided

Article 55 (also Recital 47) – Information to be given to prospective members:

PensionsEurope Comment:

PensionsEurope emphasised the focus of the IORP II Directive proposal on the employee-IORP relationship, therefore omitting the role of the employer. We think the Directive needs to recognise that in many European Member States, occupational pensions are not based on a contract between two parties, but that three parties – the employer, the employee and the IORP – are involved. The requirement on information to be given to prospective members before enrolment shows the consequences of this wrong starting point. Indeed, this Article might be difficult to implement in practice. For example, pre-enrolment requirements do not fit schemes which operate on the legal basis of a collective agreement. These agreements often stipulate that the pension scheme membership will commence with the first day of employment, it is often non-optional and paid by the employer. Providing pre-enrolment information for these types of schemes will be difficult or, in some cases, impossible for IORPs because it would have to be given to applicants before they sign their employment contract – a process in which the IORP is not involved.

Article 55 stipulates that the "institutions shall ensure" that members are informed, which means that they could also delegate this task or ask the employer to carry it out. However, in many cases it is still difficult or even impossible for IORPs to monitor whether employers are giving out the information. This is for example relevant for industry-wide IORPs covering thousands of employers and employees. Once an individual signs an employment contract with an employer in the sector, he/she automatically become a member of the IORP. This structure, the high number of participants and a relatively high fluctuation in the sector mean that it would be impossible for the IORP to ensure that all employers provide their future employees with the information before they sign the contract.

As in Article 29(2) (h), a reference is made to include considerations about the environment, climate, social and corporate governance issues in their investment policy. We would like to point out that the investment policy for occupational pensions may be strongly influenced by the sponsoring employer. If the sponsoring employer has a sustainability strategy or a corporate and social responsibility agenda, the IORP could align its investment strategy with the principles adopted by the sponsoring undertaking. It is likely that different IORPs will take very different approaches to these questions, which in consequence means that the information provided on the issue will vary as well.

Moreover, given there is no legal obligation for occupational pension schemes to take into consideration non-financial issues in their investments, information on how environmental, climate, social and corporate governance issues are considered in the investment approach should only be mandatory for those pension schemes that in their investment policy include expressly said issues.

Amendment proposal:

We therefore suggest adding the following to Article 55:

"***Where members do not have a choice and are automatically enrolled in a scheme, they should receive information about their membership once they are enrolled."***

"The institution shall ensure that prospective members are informed about all the features of the scheme and any investment options. ***If according to its investment policy, the institution takes into consideration issues*** *including information on how environmental, climate, social and corporate governance issues are considered in the investment approach,* ***these aspects shall be available on request and free of charge****".*

Article 56 (also Recital 49) – Information to be given to members during pre-retirement phase:

PensionsEurope Comment:

It is important to stress that first, there should be no duplication in terms of information requirements for the employer and the IORP, and that second, because of legal requirements and liability issues, the IORP is not allowed and/or able to implicitly act as a pension or tax advisor. We are concerned that this role of a pension advisor is suggested in the proposed text by the requirement to provide "advantages and disadvantages" of the options (Article 56 (b)). The IORP does not have information on how much income the member receives from other sources, which is crucial when discussing advantages and disadvantages of different pay out types. We therefore suggest deleting this Article.

If the Article is kept, the employer should not be required to lay out the advantages and disadvantages, and, if the IORP is required to provide information, this information should be limited to the benefits provided by the IORP. In addition, "*at least*" should be deleted, because this could be misinterpreted: if a pension scheme member has requested information about his or her accrued benefits five years prior to retirement, the IORP could refer to that information and not provide anything two years prior to retirement. We therefore think it would be best to require that the information should be provided two years before retirement, referring to the age stipulated in the contract.

We also note that the Article 56 of the Directive Proposal implies fixed retirement age as a basis which is not always the case in practice. How should the point of pre-retirement information be determined in the case of flexible retirement age?

Finally, as previously stated, to take into consideration the differences as well as the heterogeneous degree of development of the annuities markets in Member States, and admitting that there is no "one-size fits-all" solution for this matter across Europe, we propose to put all the pay-out options at the same level, without giving priority to one over the others (see also comments on Article 6).

Amendment proposal:

We suggest deleting this Article.

If the Article is kept, we suggest the following changes:

*"In addition to the pension benefit statement, institutions shall provide each member, **~~at least~~** two years before the retirement age provided for in the scheme, or at the request of the member , with **~~the following information: (a)~~** information about the options available to members in taking their retirement income**, ~~including information about the advantages and disadvantages of those options~~**, in a way which supports them in choosing the option most appropriate to their circumstances;*

> ***~~(b) where the pension scheme is not paid out as a lifetime annuity, information about the benefit payment products available, including their advantages and disadvantages, and the key considerations members should consider when making the decision to buy a benefit payment product."~~***

The Recital 49 should be changed accordingly.

Article 57 – Information to be given to beneficiaries during the payout phase (also Recital 50):

PensionsEurope Comment:

Regular information requirements during the pay-out phase only seem adequate if changes can still occur and the member can still make decisions regarding pay-out type and investment. Furthermore, informing beneficiaries about the same benefit every year is neither sensitive nor cost efficient.

Amendment proposal:

We would therefore suggest deleting Article 57(1) and only leave Article 57(2) in place to ensure that beneficiaries who do still have choices / bear investment risk are informed:

*"1. **~~Institutions shall provide beneficiaries with information about the benefits due and the corresponding payment options.~~***
*2. When **benefits or corresponding payment options change and when** a significant level of investment risk is borne by beneficiaries in the pay-out phase, Member States shall ensure that beneficiaries receive appropriate information".*

Title V – Prudential supervision

As the rules in the Directive are designed according to the objectives set in the Directive, the objectives are of utmost importance. Defining an adequate objective is the first step towards adequate rules. Therefore, if the objectives are not suitable, the rules will not fit specificities of occupational pensions either.

The main objective of prudential supervision laid down the proposed IORP II Directive (Article 59) and Solvency II (Article 27) are almost identical. Both texts state the protection of members and beneficiaries (or policy holders in Solvency II) as the most important objective. The proposed focus on the sole protection of members and beneficiaries in IORP II is not adequate for occupational pensions. Indeed, members and beneficiaries of occupational pensions are protected first and foremost by national social and labour law.

Taking the specific character of occupational pensions into account, from our perspective, there should be two main goals of prudential regulation: Supporting IORPs as well as protecting members' and beneficiaries' interests. We therefore suggest that the main goal of IORP supervision should be supporting IORPs and protecting their members.

Prudential supervision of IORPs should acknowledge that IORPs have a social purpose. They are established in conformity with national social and labour law and are – by definition – linked to an employment relationship, intended to provide a supplementary pension for employees. Therefore, the list defining the scope of prudential regulation stated in Article 60 should not lead to undermining national social and labour law(s). So far there has been no definition of "EU prudential regulation" and there is currently no clear distinction between EU prudential regulation on the one hand and national social and labour law on the other. The objective of the list is to clearly categorise certain areas as prudential regulation and cut it out of the scope of the national social and labour law. It follows from the nature of IORPs as pension institutions with a social purpose, that their prudential regulation cannot be separated by EU legislation from national social and labour law, when it includes provisions on the issues defined as prudential by the IORP II directive.

We would like to emphasise that even in the areas which clearly fall under prudential regulation, it is necessary to adapt any prudential requirements so that they fit national social and labour law(s). For this process, a good and efficient cooperation with the Member States is crucial; this cannot be decided unilaterally by EIOPA and the

European Commission. Therefore, the IORP II Directive should make it unmistakably clear that every activity related to occupational pensions that is legal under national labour law will be also legal under national prudential law.

Chapter I – General rules on prudential supervision

Article 59 (also Recital 51) – Main objective of prudential supervision:

PensionsEurope Comment:

The main objective of supervision needs to fit occupational pensions. Since the requirements in a Directive are developed to fit the objectives stated in the Directive, the definition of the objective is of utmost importance. Getting the objective right is the first prerequisite for getting the requirements in the Directive right.

As stated above, the proposed sole focus on the protection of members and beneficiaries does not fit occupational pensions, which is often organised by the social partners who in this regard share similar interests. Members and beneficiaries of occupational pensions are first and foremost protected by national social and labour law.

Amendment proposal:

To acknowledge this difference between occupational pensions and life insurance contracts, we suggest defining the objective of IORP supervision in Article 59 (and recital 51) as follows:

"~~The competent authority should exercise its powers having as its prime objective the protection of members and beneficiaries~~. ***Taking into account national social and labour law, the IORP Directive supports the establishment and operation of IORPs, encourages their efficient management and administration, enhances their attractiveness for employees and employers and supports the protection of members and beneficiaries."***

We suggest amending the Recital 51 accordingly.

Article 60 (also Recital 52) – Scope of prudential supervision:

PensionsEurope Comment:

The list defining the scope of prudential regulation stated in Article 60 should not lead to undermining national social and labour law. As IORPs are pension institutions with a social purpose, they should be subject to legal requirements giving precedence to the respective national social and labour law.

Amendment proposal:

We suggest introducing a second paragraph to this Article which requires the Member States to take into account their national social and labour law when transposing this Directive. We suggest the following text:

"When transposing this Directive, Member States shall take into account national social and labour law."

We suggest amending the Recital 52 accordingly.

Article 61 (also Recital 53) – General principles of prudential supervision:

"1. The competent authorities of the home Member State shall be responsible for the prudential supervision of institutions for occupational retirement provision.

2. Member States shall ensure that supervision is based on a prospective and risk-based approach.

3. Supervision of institutions shall comprise an appropriate combination of off-site activities and on-site inspections.

4. Supervisory powers shall be applied in a timely and proportionate manner.
5. Member States shall ensure that the competent authorities duly consider the potential impact of their actions on the stability of the financial systems in the European Union, in particular in emergency situations."

PensionsEurope Comment:

This Article provides five general principles of prudential supervision. While the protection and members of beneficiaries is an important goal of prudential regulation, it can only be achieved in conjunction with national social and labour laws.

Article 61 (2) requires supervision to be based on a "*risk-based approach*". While we do not object to a risk-based approach, we are against the introduction of an adapted Solvency II approach with a mark-to-market valuation for IORPs. IORPs should be subject to prudential regulations that are qualitative and risk-based in nature and respect their character as social entities with recourse to the sponsoring employer in case of underfunding.

Amendment proposal:

We therefore suggest amending the Article by adding two new principles:

1. ***"Prudential supervision of IORPs shall acknowledge that IORPs have a social purpose. They are established in conformity with national social and labour law and practice and are linked to an employment relationship, intended to provide a supplementary pension for employees.***
2. ***"Any activity related to occupational pensions which is legal under national social and labour shall also be legal under national prudential law. "***

Article 61(5) is a repetition of Article 59(2). We therefore suggest deleting Article 61(5):

~~***5. Member States shall ensure that the competent authorities duly consider the potential impact of their actions on the stability of the financial systems in the European Union, in particular in emergency situations."***~~

We suggest amending the Recital 53 accordingly.

Title VI – Final provisions

Article 75 (also Recital 57) – Evaluation and review:

PensionsEurope Comment:

We have noted that Recital 57 explicitly refers to a review regarding "*the calculation of the technical provisions, the funding of technical provisions, regulatory own funds, solvency margins, investment rules and any other aspect relating to the financial solvency situation of the institution*." As stressed before, we do not see any benefit in harmonising solvency requirements based on Solvency II or comparable approaches across the EU and warn that this could harm occupational pension systems and counteract any ambition to enhance access to occupational pension systems and in the end lead to a decline of the coverage ratio all over Europe.

This also suggests that sponsoring employers and IORPs can expect further changes after the evaluation of the Directive in four years' time. Employers are unlikely to commit significant resources to any project if it is likely that the legal environment will change. The uncertainty created by Article 75 and especially by the specifications contained in Recital 57 is likely to mean lower pensions and fewer beneficiaries. The new Directive should clearly set out that solvency requirements of the life insurance industry are not adequate for IORPs, neither today nor in the future.

Amendment proposal:

We suggest deleting the Recital 57

Article 76 - Amendment of Directive 2009/138/EC

PensionsEurope Comment:

Currently the Reinsurance Directive 2005/68/EC[14] is still in force. Its definition of reinsurance includes the provision of cover by a reinsurance undertaking to an institution for occupational retirement provision (Article 2 (2)). The article reads: "*For the purposes of paragraph 1(a) of this Article, the provision of cover by a reinsurance undertaking to an institution for occupational retirement provision falling under the scope of Directive 2003/41/EC where the law of the institution's home Member State permits such provision, shall also be considered as an activity falling under the scope of this Directive*."

With the introduction of the Solvency II Directive[15] in January 2016 this Article will no longer be valid. The Solvency II Directive has a narrower definition of reinsurance, limiting reinsurance to insurance undertakings or reinsurance undertakings. Article 13 (7) of Solvency II reads:

"'reinsurance' means either of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or

(b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks,

[14] Available here: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32005L0068
[15] Available here: http://eur-lex.europa.eu/legal-content/FR/ALL/?uri=CELEX:32009L0138

ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;"

This would mean that IORPs would not be able to reinsure their risks by a reinsurer as they currently do for longevity as well as for invalidity and survivor's pensions in some Member States. IORPs should have the opportunity to make use of this instrument if they consider it advantageous for the employer and their beneficiaries. We therefore think that IORPs should continue to be able to cover their risks using reinsurance.

Amendment proposal:

The Article 76 (which currently only amends Art. 306a) should be amended by inserting in the following marked text in Article 13 (7)(a) of the Solvency II Directive:

(7) "'reinsurance' means either of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or a third-country reinsurance undertaking, ***or by an institution for occupational retirement provision as covered by (****Directive 20xx/xx/EC)* *or,*
(b) […]"

Article 78 – Transposition:

PensionsEurope Comment:

PensionsEurope would like to point out that the timeline is very ambitious concerning the new requirements. The report is supposed to be presented four years after the Directive enters into force. Member States have to bring the Directive into force by December 2016. Assuming the Directive is adopted in late 2015, this would mean a report in 2019, which would have to be prepared in late 2018 / early 2019 – only two years after the Member States transposed the Directive. A longer transposition period could be envisaged.

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace pensions. Some members operate purely individual pension schemes. PensionsEurope Members are large institutional investors representing the **buy-side** on the financial markets.

PensionsEurope has **23 member associations** in EU Member States and other European countries with significant – in size and relevance – workplace pension systems[16].

PensionsEurope member organisations cover the workplace pensions of about **80 million European citizens**. Through its Member Associations PensionsEurope represents approximately € **3.5 trillion of assets** managed for future pension payments.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

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[16] EU Member States: Austria, Belgium, Croatia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Guernsey, Iceland, Norway, Switzerland.