EFAMA

European Fund and Asset Management Association

Consultation Response

Brussels, 26 May 2023

EFAMA response to EIOPA's Consultation paper on technical advice for the review of the IORP II Directive

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Chapter 2. Governance and prudential standards

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

Only to some extent. Indeed, while recognizing the important fact that the IORP II Directive is a minimum harmonisation Directive, we note that the principle of proportionality is not applied in the same way across Member States.

Q2.2: Should in your view the threshold for the small IORP exemption of 100 members be increased? If yes, do you agree with the proposed new threshold (both 1000 members and beneficiaries and EUR 50 million in assets) under option 1 in sub-section 'Small IORP exemption' of section 2.3.5? Please explain your answer and provide any alternatives.

We agree that the threshold could be increased. However, it is important to keep in mind that (i) small IORPs do not necessarily have a low risk profile and (ii) DB pensions plans tend to involve a higher level of risk than DC plans, particularly those smaller DB schemes with older member age profiles. Hence, the introduction of exemption thresholds for DB plans may not necessarily be an adequate solution.

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

We agree with this approach as it offers the same level of protection for members with similar risks regardless of the size of the plan.

Q2.4: Do you support option 1 in sub-section 'Low-risk profile IORPs subject to proportionality measures' of section 2.3.5 of defining a category of low-risk profile IORPs in the IORP II Directive and allowing Member States to exempt such IORPs from certain minimum standards in the IORP II Directive? Please explain why or why not. Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?

While agreeing on the importance of a proportionate application of the Directive, we fear that the creation of a low-risk category of IORPs could have some negative unintended consequences, in particular, because these IORPs may be perceived as high-quality IORPs, which would not necessarily be the case, particularly because of the exemptions that would be granted to these IORPs. There is also a risk that some IORPs limit their activities to remain below the low-risk threshold to benefit from existing exemptions granted by the Member States.

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

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

Defining the criteria to quality as "low-risk profile IORPs" will be very challenging. In this context, we have reservations regarding the 5% threshold that would imply that cross-border IORPs would be considered as "high-risk profile IORPs", which would create another obstacle to the emergence of a single market for IORPs.

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

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

We do not agree with requiring additional governance and prudential requirements exceeding the current standards, as this approach would de facto introduce additional burdens on most IORPs and therefore lead to increased compliance costs.

Q2.8: Do you have any other suggestions to ensure a proportionate application of the requirements in the IORP II Directive? If yes, please provide these suggestions and explain why they should be considered.

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

No. We believe that the current requirements are sufficient for the purpose as the Directive requires IORPs to cover liquidity risk in their risk-management system taking into account the complexity of their activities, and to assess the effectiveness of their risk-management system and therefore also the liquidity risk.

Q2.10: Do you agree that in some situations conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connected to the IORP? Please explain your answer with relevant supporting evidence.

We agree that there should be measures in place to manage potential conflicts of interest between IORPs and service providers. However, we would suggest the Directive provisions are generally adequate in this

respect. This being said, more guidance to supervisors on what to look out for and how to oversee potential conflicts could be useful.

Concerning the multi-employer structure of some IORPs, where the service provider is a regulated entity governed by an equivalent or more prescriptive EU law such as MiFID, UCITS or Solvency II, it will already be subject to the requirements to identify and prevent, manage conflicts of interests. Where the services provider is unregulated, then conflicts should be carefully managed.

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

While agreeing on the importance of ensuring a proper functioning of the internal market, we have strong reservations against the proposed amendment to article 9, which goes too far in prescribing the elements that should be covered in the business plan to be submitted by IORPs as part of the authorization or registration of IORPs.

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

We agree implementing option 1 in the Directive, in particular because option 2 would be very costly.

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

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

We agree with EIOPA's advice as stated in paragraph 2.7.5.

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

Yes, we agree.

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

We agree but there will be a need to clarify who will have to verify the equivalence of a third-country market, i.e., whether such assessment should be carried out by IORPs or by the Commission.

In general, we strongly believe that IORPs should be able to invest in financial instruments traded in all third country markets where the latter meet certain conditions, regardless of the adoption of an equivalence decision by the Commission.

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

We believe the current wording in Article 19 would benefit from additional clarity. As trading platforms regulated by MiFID, we believe MTFs are a useful additional trading venue for investments, providing wider investment options and potentially driving down costs and assisting liquidity.

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

We have strong reservations against a one-size-fits-all approach that would require all IORPs to have an ORA policy that would specify all the components mentioned the consultation paper. We indeed consider that asset management companies setting up DC IORPs already apply stringent provisions in line with their sectorial framework. As IORP II is a minimum harmonisation Directive, it should leave room for IORPs differences.

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

Along the line of our previous response, we believe it essential to keep in mind that asset management companies setting up DC IORPs must have in place adequate and effective arrangements, processes and techniques in order to: (a) identify, measure, manage and monitor at any time the risks to which the fund under their management is or might be exposed; (b) ensure compliance with the limits set. When setting risk limits, they must take into account the strategies and assets employed in respect of each fund they manage, and those limits should be aligned with the risk profile as disclosed to investors. It would therefore be important to avoid introducing unnecessary burden and related additional costs.

Chapter 3. Cross-border activities and transfers

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

In dealing with this issue, we believe that there is scope for a distinction between DB and purely DC IORPs, as the issue of regulatory arbitrage is predominantly an issue for DB obligations and the capital required to fund them. This distinction would help avoiding unduly impeding cross border activity on DC IORPs. Therefore, we are against any change in Article 9 and support Option 1 of "No Change".

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

We agree with EIOPA that if no change is taken, the barriers to conducting transfers will remain and many IORPs will choose not to conduct a cross-border transfer. As the development of cross-border IORPs would create scale and help in turn deliver better pricing and value for money for consumers, we are supportive of a uniform EU definition for the majority for transfers (or the remvoval of the 'majority' requirement), but if this definition is to continue it should also enable employee representatives to take the decision in the alternative to members/beneficiaries. In addition, we suggest there should be consistency of treatment between national transfers and cross-border transfer rules, and if a majority is required for cross-border transfers this should also be required for national transfers, including a consistent definition 'majority'.

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

We agree with EIOPA's statement that members and beneficiaries lose out on scale and potential savings of access to a wider IORPs market. Not finding another way to foster an internal European market for pensions leaves the system stagnate further.

Removing obstacles associated with transferring assets cross-border versus domestic transfers is an obvious solution. If deemed useful to adopt this solution, consideration should also be given to differentiating between DC and DB pension plans with a view to removing some of the barriers associated with these transferring and operating cross-borders and allowing for a risk based approach dependent on scheme type.

We would suggest two additional options could be considered to enable the cross-border IORP market:

- An EU hub providing a central point for information about the tax systems of Member States - containing links to legislation and guidance on how different systems work. If this knowledge could be facilitated centrally it would substantially reduce the time and costs in establishing a cross-border IORP for a sponsoring employer, and make IORPs easier to maintain going forward when tax systems change.
- A central IT system for cross-border IORP approvals/authorisations. This would include an automated process and tracking, with online access for IORPs, sponsoring employers and NCAs. This access would enable all parties to be able to log in and see clearly where in the cross-border approval/authorisation process the pension scheme is. IORPs would get immediate notifications on next steps, with the facility to upload documents that can be viewed by the home and host state regulators. And with the inclusion of up-front tick boxes at the start of the process to clarify if the IORP is doing cross-border activity or if there is a cross-border transfer, or both, it will enable clear requirements to be provided electronically by the regulators to the IORP making the online application.

In addition, we would suggest that there should be clarification on the appointment of depositaries by cross-border IORPs. In particular if the home Member State and the host Member State both require the appointment of one or more depositaries for schemes where members/beneficiaries fully bear the

investment risk, it would be helpful to clarify which Member State takes precedence for the oversight of the depositary. Given this is not a SLL requirement, we would suggest that it is the home Member State that has priority in respect of oversight. Further if the appointment of a depositary is required for a cross-border IORP, and whilst this may offer member/beneficiary protection, it can also be an obstacle if a national IORP does not require this depositary appointment.

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

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

To the extent that Member States have taken different approach and introduced the PBS at different times, it is difficult to assess the benefits of the PBS. We would however stress the importance of providing clear, concise, and easy to understand information in the PBS, focusing on what members have paid in or has been paid in on their behalf, the value of contributions paid, earnings or losses made, where their contributions are invested and what they might receive on retirement.

In this context, we believe that the pension statement developed for the PEPP, which was consumer tested, satisfies that requirement.

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

We support the need to provide summary information regarding the extent to which sustainable investments are made by IORPs, provided that this does not entail any additional requirement for IORPs in terms of information and data to be disclosed beyond what is already made available in the template for the SFDR disclosure.

For this reason, the sustainability information provided in the PBS should be limited to information on the product characteristics, in terms of whether the investment option selected has sustainable investment as its objective or promotes environmental or social characteristics in accordance with SFDR, in order to alert the member/beneficiary on the sustainability elements of their pension product and inform them that more detailed information are available in the SFDR periodic disclosure documentation offer.

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

We recommend clarifying EIOPA's advice by replacing "an indication of the risk level in summary form" by "an indication of the risk of each investment option".

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

To be effective, PBS should be short, which is unfortunately not the case in some Member States.

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

In general, we believe that providing the PBS digitally is the preferred approach.

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

We believe that the information provided in PBS should be generic rather than member specific because of the cost implications.

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

We share the view that providing information on potential retirement benefits is important to help members better assess how much they should save to maintain an adequate standard of living in retirement. We fear however that including three scenarios may be confusing for many members and lead to some procrastination. Defining more favourable or less favourable scenarios regarding retirement benefits to be paid 20, 30 or 40 years later would be highly speculative and would therefore provide unreliable and misleading information to members. We agree on the need to inform members about their benefits in real terms to ensure they understand the negative impact of inflation on their retirement saving.

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

We would not see benefit in developing other elements regarding projections in the Directive or using another tool to establish a more common basis or provide more guidance at EU level. As explained in the previous response, we are sceptical regarding the benefit of including several scenarios for disclosure purposes.

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

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

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

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

We generally support the choice to introduce duty of care principle for IORPs. However, we believe that the Directive already contains significant measures to enable prospective members to make informed choices, in particular in Articles 37 and 41.

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

Chapter 5. Shift from defined benefit to defined contributions

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

We consider that all IORPs should conduct long-term risk assessments to adequately inform members about their future retirement income. As for the use of pension projections, we note that most NCAs have not introduced any requirement, for different valid reasons. This highlights the need to allow sufficient flexibility to the IORPs to determine how and when pension projections should be used to complement their ongoing risk management and consider the risk tolerance of their members and beneficiaries, as several approaches can be relevant, depending on the size of the market and the structure of the market.

We consider that allowing members to choose between different investment options is a very practical way of ensuring a matching of the preferences at an individual level.

The solutions also include better educated consumers and the availability of advice and guidance, especially through digital means using the power of technology and planning tools.

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

In our view, all individuals should have access to appropriate investment strategies. In this situation, it is up to the members to select the investment option or a combination of investment options that respond to their individual preferences. In this case, the IORP responsibility is to manage their investment in line with the contractual definition disclosed to (potential) members. Since the decision-making criterion for choosing the option(s) is in the hands of the members, we believe that strengthening disclosure is the right solution to reduce cases of not well-informed choices.

For people unwilling or unable to choose, a default investment strategy should be established. As enshrined in the PEPP Regulation, life cycle investment strategies are well suited to be offered as default

option, as they encourage members to take on some investment risk when young, and to mitigate the impact of extreme negative outcomes when close to retirement.

Lastly, it is also important to take into account the long-term horizon related to retirement savings when assessing the risk appetite/profile from an individual; this is crucial to avoid driving members to opt for an unnecessarily too conservative investment allocation that neglects the ultimate goal of achieving adequate retirement income by saving in a DC pension plan.

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

We are in favour of annual reporting, based on a consistent template, keeping in mind that only relevant information should be provided to members and beneficiaries.

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

We support the proposed changes set out in section 5.5.4.

Chapter 6. Sustainability

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

We agree that IORPs should consider ESG risks if they want to acquire a holistic view of their exposure to overall risks, in particular because of the long-term investment horizon of IORPs. This view is consistent with the prudent person principle and the requirement that IORPs must ensure safety, quality, liquidity and profitability of the portfolio as a whole.

Accordingly, we support EIOPA's proposal to amend Article 19(1)(b) to include a requirement for IORPs to consider sustainability risks in their investment decisions requiring IORPs to take into account the impact of sustainability risks on their investment decisions.

This being said, given the difficulties of collecting all relevant data, modelling impact of investment decisions on ESG and skills or resources needed to embed ESG factors in IORPs policies, a flexible approach based on best effort should be adopted regarding the way in which sustainability risks are integrated into IORPs' risk management, taking into account the costs involved especially for small and medium sized IORPs.

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

The requirement could only be considered for IORPs that could collect the sustainability preferences of members and beneficiaries, easily and at low costs. Aside from this consideration, aggregating the preferences of different members in a meaningful way would be challenging as the aggregated preference would not be representative of the preferences expressed by most members. For this reason, we invite EIOPA to reconsider its draft advice.

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

We agree that IORPs need to integrate sustainability considerations in so far they are consistent with other investment principles included in Art.19(1)(a) and (c) of the prudent person rule, in particular to invest the assets in the best long-term interests of members.

This being said, it is not straightforward to end up in a situation where IORPs would be able to understand their members' sustainability preferences and take them into account in their investment decisions, including because the calculated average preference may be very different from the preferences of many members.

Developing EIOPA guidance to explain when and how IORPs can do this should be considered. On this point, we agree that the development of technology-based solutions to help establish and assess beneficiary views and preferences would be useful. Improving financial literacy among European citizens to enable them to decide and express their sustainability preferences is also necessary.

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

We agree that investor stewardship can play a crucial role in the sustainability transition through engagement with investee companies aimed at improving their sustainability strategies and addressing sustainability risks.

In this regard, we welcomed the fundamental changed introduced by SRD II, which will help improve the governance of listed companies and strengthen their sustainability in the long term, by greater and easier involvement of shareholders in the company corporate governance.

In that light, SRD II imposes on asset managers and institutional investors several obligations regarding their engagement activity, among which the obligation – on a comply or explain basis - to develop and publicly disclose an engagement policy describing how they integrate stewardship in their investment strategy as well as to annually report on the implementation of such policy.

We believe that current stewardship framework and approach deployed by the SRD II, pivoted on the "comply or explain" principle, is the most suitable for ensuring that sustainability matters are considered in a proportionate and flexible manner.

Chapter 7. Diversity and Inclusion

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

We would support such recommendations.

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

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

We believe transparency is important in this area and would support such disclosures.

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ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 30 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities.

EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

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