

Comments of the Deutsche Aktuarvereinigung to the consultation paper on technical advice for the review of the IORP II Directive

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.	The current IORP Directive and its national implementation provide a sufficient framework for the regulation and supervision of IORPs.
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.	In general, there is nothing to be said against such an increase. However, current (exemption) regulations are sufficient; only in the case of a further development of the IORP Directive are extensions of exemption regulations necessary.
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.	No, because "nature, scale and complexity" are not sufficiently defined to replace the previously sufficiently clear criteria (size and organization).
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	See 2.3

	such IORPs from certain minimum standards in the IORP II Directive? Please explain why or why not. Which minimum standards in the IORP II Directive should in your view be considered for the possible exemptions or should be applied in a less onerous way?	
Q2.5	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'.	We support the current minimum harmonization approach with exemptions for small members. Instead of overcomplicate the objective of proportionality by a list of criteria we recommend a "comply or explain approach". That means to mark certain objectives as subject to "comply or explain" and the IORP itself either implements the regulation or justifies a deviant handling without implementing the given rules. A regular validation and test of impairment could be included in the ORA report.
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	The current minimum harmonization approach provides a sufficient and manage-

	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	able framework for regulation and supervision of IORPs. This can be combined with the guideline either to comply or explain. Given this there is no need for additional exemptions or an extension of current standards.
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.	Any substantial risk from margin calls or the risk of unlimited losses from short positions should be visible. Otherwise, the relatively predictable and continuous cash flow from the obligations of an IORP allows for sufficient liquidity planning.
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.	
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.	
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.	In practice, we currently see no restriction on the collection of data at the national level. An explicit further authorization of the NCA does not seem necessary.
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.	It would be very helpful if EIOPA takes over the data from the NCAs and the NCAs are the exclusive contacts of the (national) IORPs.
Q2.14	What are your views on reiterating in the draft advice EIOPA's opinion to the EU institutions on a common framework for risk assessment and transparency, considering that the draft advice does not advise any change to the IORP II Directive in this area?	We welcome the fact that EIOPA is not addressing any changes to the existing solvency regime. We continue to reject the use of a common framework based on a mark-to-market approach (also for our own risk assessment). Especially the interest rate shift and the development on the capital markets in the last months show that the very volatile valuation of assets and liabilities on a mark-to-market basis is not appropriate for the management of IORPs.
Q2.15	Should the definition of sponsoring undertaking in Article 6(3) be expanded to include professional associations? Please explain your answer.	
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.	

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.	
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.	
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.	

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 practice, we currently see no issue with regard to regulatory arbitrage.
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?	The question does not have sufficient practical relevance to require extended regulations and procedures for this purpose.
Q3.3	What are your views on the need and options to develop an internal market for cross-border IORPs?	Not necessary from our point of view, as there is a lack of demand for cross border activities.

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.	PBS is standard and may be expected by the customer. However, this usually serves more for transparency and information purposes than to result in actions on the part of the customer.
Q4.2	Do you agree to introduce summary information in the pension benefit statement relating to any sustainable investments? Please explain.	No, the amount of information in the PBS is perfectly adequate. Experience has shown that there is no urgent need of additional information from customer's point of view.
Q4.3	What other improvements do you consider could be made to the pension benefit statement? Please explain your suggestions.	See 4.2.
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)?	See 4.2.
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.	
Q4.6	Would there be challenges to implement the proposed additional requirements regarding cost transparency? Please explain.	Yes, IORPs organize collective pension provision, which generally does not allow for meaningful itemized cost reporting at a contract by contract level.
Q4.7	What are your views on the proposed options regarding projections? Are there additional costs or	A mandatory introduction of additional projections is not necessary, since there is simply no customer requirement for

	benefits that have not been identified? Please explain.	this, nor is the benefit in any meaningful relation to the effort.
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?	A (Europe-wide) standardization of "projection requirements" does not seem appropriate in view of the large number of different products.
Q4.9	Do you think it is relevant to introduce requirements to ensure the appropriate structuring and implementation of the pension scheme by the IORP? Please explain.	In our view, the prudent person principle can be relied upon here without the introduction of additional process rules.
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.	See 4.9.
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.	See 4.9.
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?	See 4.9. In Germany, IORPs are in many cases mutual insurance societies which, by virtue of ownership alone, ensure that IORPs act in the best interests of their members.
Q4.13	What are your views on how the requirements for a duty of care should be framed?	See 4.12.

Kommentiert [HM(1): Bezug auf Mutuals ist zu einseitig. Auch Aktiengesellschaften handeln „in best interest of their customers“, weil sie sonst bald keine Kunden und keine Zukunft mehr hätten. Bitte anpassen/ergänzen

Chapter 5. Shift from defined benefit to defined contributions

Q5.1	What are your views on the options for long-term risk assessments?	IORPs should have a profound understanding of their products, their investments and the also long-term risk - especially volatility of resulting benefits.
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?	See 5.1. This also means that IORPs should not provide the whole investment universe in case members can select their investment but at most several investment choices based on an reasonable investment mix. Occupational pensions should not be viewed as retail or financial products. In general occupational pensions are based on collctive calculationn and collective investment pools.
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?	See 4.6 and 5.2.
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?	

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 share EIOPA's view that the consideration of sustainability risks requires access to relevant data and the necessary knowledge and expertise to embed ESG factors into IORP policies or rely on outsourced services. However, this would be a major challenge for IORPs with fewer resources and would entail additional investment at the expense of returns. Moreover, IORPs often do not have the necessary resources to do so. Therefore, a general mandatory consideration of sustainability risks is not appropriate.
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.	<p>"The sustainability preferences of the members of the pension institution and the beneficiaries may well differ, as you yourself indicate. This can lead to conflicts between the members of the pension institution and the beneficiaries, which must be avoided. For the beneficiaries of a member, the sustainability preferences may explicitly differ from each other. If an average of the sustainability preferences of all beneficiaries were formed, this average would usually not correspond to the individual sustainability preference of the individual beneficiary and would therefore not provide any individual benefit at all. The pension institutions then do not act in the best possible interest of the beneficiaries.</p> <p>We are critical of the need for the pension institution to ask the individual beneficiaries. In the collective business, this would limit its benefit - a better price/performance ratio with less administrative effort for all participants. We also see no obligation on the part of the beneficiary to provide information on his</p>

		<p>sustainability preferences to the member of the pension institution.</p> <p>We do not see any advantage in involving members and beneficiaries more in investment decisions. On the contrary, due to the different preferences as well as lack of knowledge, this can lead to the fact that no uniform and well-founded opinion can be read."</p>
Q6.3	<p>What are your views on how sustainability considerations should interact with other investment objectives of the prudent person rule (Article 19(1)(a)(c))?</p>	<p>"The consideration of sustainability preferences should not take a dominant position. In our opinion, it is sufficient to offer members and beneficiaries investments with ESG characteristics without taking individual sustainability preferences into account.</p> <p>The assessment of whether and to what extent sustainability considerations can be taken into account in addition to the investment objectives according to the prudence principle in a given framework should be the main responsibility of the IORPs, as they have the necessary knowledge and must ultimately bear the responsibility for the investment."</p>
Q6.4	<p>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?</p>	<p>"In principle, we consider an engagement to be sensible and important. The possibilities for IORPs to influence the companies in which they invest are limited due to their comparatively small size and investment volumes. Therefore, the use of this instrument should not be mandatory.</p> <p>Again, as mentioned in Q6.2, we consider the involvement of members and beneficiaries to be critical. "</p>

Kommentiert [AS2]: Ist hier reached gemeint?

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?	
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?	