

Consultation paper on technical advice for the review of the IORP II Directive

Fields marked with * are mandatory.

Responding to the paper

EIOPA welcomes comments on the Consultation paper on technical advice for the review of the IORP II Directive.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

The consultation paper includes specific questions on some review items. In the survey below, stakeholders can respond to those specific questions and provide any other comments on all parts of the paper.

Please send your comments to EIOPA using the EU Survey tool **by Thursday, 25 May 2023, 23:59 CET** by responding to the questions below.

Contributions not provided using the EU Survey tool or submitted after the deadline will not be processed and therefore considered as they were not submitted.

Publication of responses

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents[1].

Declaration by the contributor

By sending your contribution to EIOPA you consent to publication of all information in your contribution in whole/in part – as indicated in your responses, including to the publication of your name/the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

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[1] [Public Access to Documents](#)

Remarks on completing the survey

EU Survey supports the last two versions of Microsoft Edge and the latest version of Mozilla Firefox and Google Chrome. Using other browsers might cause compatibility issues.

After you start filling in responses to the survey there is the option to save your answers. However, please note that the use of the online saving functionality is at the user's own risk. As a result, it is strongly recommended to complete the online survey in one go (i.e. all at once).

Should you still proceed with saving your answers, the online tool will immediately generate and provide you with a new link from which you will be able to access your saved answers.

It is also recommended that you select the "Send this Link as Email" icon to send a copy of the weblink to your email - please take care of typing in your email address correctly. This procedure does not, however, guarantee that your answers will be successfully saved.

You will have the possibility to print a pdf version of the final responses to the survey after submitting it by clicking on "Download PDF". You will automatically receive an email with the pdf file. Do not forget to check your junk / spam mailbox.

About the respondent

* Please indicate the desired disclosure level of the responses you are submitting.

- Public
- Confidential
- Partly confidential

* Stakeholder name

ShareAction

* Contact person (name and surname)

Marika Carlucci

* Contact person email

marika.carlucci@shareaction.org

Contact person phone number

Questions to stakeholders

Executive summary

* Do you have any comments on the executive summary?

- Yes
 No

Please provide your comments on the executive summary.

ShareAction is a research and campaigning organisation pushing the global investment system to take responsibility for its impacts on people and planet, and to use its power to create a green, fair, and healthy society. We want a future where all finance powers social progress. For over 15 years ShareAction has driven responsibility into the heart of mainstream investment through research, campaigning, policy advocacy and public mobilisation. Using our tools and expertise, we influence major investors and the companies they invest in to improve labour standards, tackle the climate crisis and address inequality and public health issues.

According to the latest data collected by the European Central Bank, pension funds in the euro area held a total of €3,123 billion in assets at the end of 2022. The detention of such a significant amount of financial capital puts them in a prominent position to shape what our future will look like through their investment choices.

Hence, ShareAction welcomes EIOPA's draft advice addressing proportionality, information and duty of care to members and beneficiaries, sustainability, and diversity and inclusion, which represents a first step to ensure IORPs are subjected to similar provisions as other actors in the financial system. Nonetheless, we believe that more ambition is needed to generate meaningful impact, especially with regards to sustainability.

We have provided several suggestions on how to ensure consistency with other legislation, and mainstream sustainability across the different sections of this consultation paper. Our main recommendations are:

- On proportionality, we are against increasing the threshold for small IORPs exemptions to not weaken the implementation of the directive, but we welcome the suggested reformulation of "low-risk profile IORP" that accounts for the possible risks bore by small-sized IORPs and recommend introducing a minimum threshold for sustainability in the definition thereof.
- On the section addressing information to members and beneficiaries and other business conduct requirements, we support EIOPA's suggestion of including summary information in the Pension Benefit Statement, as well as information risks, costs and returns (ideally both financial and non-financial) of the

options selected. This would not only increase transparency, but also empower members to be more engaged in their IORP activities. Additionally, whilst we support EIOPA's suggestion on how the requirements for a duty of care should be framed, we recommend introducing a clear provision requiring IORPs to seek to ascertain beneficiaries' views in order to understand their best interests and act upon them.

- On sustainability, we welcome the emphasis placed on sustainability risks and the introduction thereof throughout the recommended requirements. We also support an "opt-out" rather than "opt-in" approach to considering sustainability on the principle of 'presumed consent', and we believe that sustainability considerations and other investment objectives of the prudent person rule are intertwined but not mutually exclusive. Finally, we call for all IORPs to have strong and mandatory stewardship policies covering responsible investment factors.

- On diversity and inclusion, we welcome EIOPA's recommended requirements on D&I in management bodies and overall governance and decision-making across IORPs. However, IORPs should not be granted the possibility to avoid compliance by explaining, and their diversity and inclusion policy should be made publicly available in its entirety.

Chapter 1. Introduction

* Do you have any comments on the introduction?

- Yes
 No

Chapter 2. Governance and prudential standards

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

- Yes
 No

Please explain your answer.

The measures included in the IORP II Directive are proportionate and facilitate compliance through the reduction of administrative burden. Whilst proportionality is important, it should not be accepted as a rationale to weaken the directive, such as by lowering expectations or introducing exemptions for a significant number of entities from provisions that could lead towards more sustainable practices in the interests of both people and the planet. The introduction of summary information in the pension benefit statement relating to any sustainable investments and the requirement for IORPs to take into consideration the sustainability factors in investment decision-making are examples of such practices.

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

- Yes
 No

Please explain your answer and provide any alternatives.

Retaining the 100-member threshold, or even reducing it, allows for more IORPs to be subject to IORP II provisions, and thus implement fully the text of the directive, including art. 19(1) on investment rules which

introduces the prudent person principle and the consideration of ESG factors. This ensures that IORPs with sufficient capacity comply with the set requirements both in the IORP II directive and sustainability-related disclosure requirements in the SFDR. Whilst reducing the threshold may increase compliance cost for some schemes in the short-term, we believe that this cost would likely be outweighed by the long-term cost to IORPs and their members from not complying with sustainability measures in IORP II and the SFDR, as this may lead to insufficient action to address financially-material sustainability risks.

As small IORPs can also bear significant risks, we support the definition of a category of low-risk profile IORPs in the IORP II Directive to ensure a minimum level of consistency across Member States, the application of proportionality measures and, in parallel, the introduction of higher standards for other IORPs (see answer Q2.4-5)

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

- Yes
- No

Please explain your answer.

This will put an emphasis on the choices and activities of IORPs, and hence consider the possible risks they entail. However, the definition of "low-risk profile" could also include minimum thresholds for sustainable investments, as they reduce systemic risks (from climate and biodiversity breakdown to social factors, among others) that affect investment returns in general (see answer to Q2.5).

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

- Yes
- No

Please explain why or why not.

We do not support giving greater discretion to Member States on possible exemptions granted to low-risk profile IORPs, as this would lead to inconsistency and fragmentation across the EU. Additionally, we oppose claims that increased compliance costs for non-low-risk profile IORPs will result in lower benefits and/or higher contributions, as inadequate addressing of sustainability risk would outweigh increased compliance costs.

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?

- Yes
- No

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

We recommend introducing an additional condition that requires IORPs to meet a minimum threshold for sustainability in order for an IORP to be considered of "low-risk profile". This should specifically entail not only addressing sustainability at a portfolio or sectoral level which may be addressed through diversification, but a requirement to add climate-related risks to IORPs systemic risk registers. This is important as systemic risks (such as environmental degradation and population health) pose a risk to the broader economy that IORPs cannot diversify away from and must address through a universal approach to stewardship.

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

- Yes
- No

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

- Yes
- No

Please explain your answer.

We support the introduction of standards exceeding the current minimum for non-low-risk IORPs, as this would ensure that provisions are proportionate vis-a-vis low-risk IORPs and that ambition matches the level of risk.

Q2.8: Do you have any other suggestions to ensure a proportionate application of the requirements in the IORP II Directive?

- Yes
- No

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

- Yes
- No

Please explain your answer.

Q2.10: Do you agree that in some situations conflicts of interest between IORPs and service providers can give rise to specific risks which justify requirements on the management of conflicts of interest with the service provider connect to the IORP?

- Yes
- No

Please explain your answer with relevant supporting evidence.

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

- Yes
- No

Please explain your answer with relevant supporting evidence.

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.

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

- Yes
- No

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?

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

- Yes
- No

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?

- Yes
- No

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?

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- Yes
- No

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?

- Yes
- No

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?

- Yes
- No

Please explain your answer.

Do you have any other comments on the following sections in chapter 2:

	Yes	No
* Section 2.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.3: Proportionality	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.4: Liquidity risk management	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.5: Conditions of operations and management of conflict of interest	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.6: Effective use of data	<input type="radio"/>	<input checked="" type="radio"/>

* Section 2.7: Standardised risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 2.8: Miscellaneous	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 3. Cross-border activities and transfers

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

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?

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

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

	Yes	No
* Section 3.2: Implementation and effectiveness	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.3 Relevant Legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.4 Other Regulatory Background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.5 Previous EIOPA Reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.6 Prudential Assessment Within Process of Registration or Authorisation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.7 Cross-border Transfers	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.8 Notification Procedures	<input type="radio"/>	<input checked="" type="radio"/>
* Section 3.9 Supervisory Cooperation	<input type="radio"/>	<input checked="" type="radio"/>

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.

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

Yes, we do. Members and beneficiaries have the right to be provided with clear, concise, and accurate information about the nature of the investments made and the sustainability thereof in their Pension Benefit Statements, in addition to having access to more detailed information in the IORP's Annual report. This would not only increase transparency, but also empower members to be more engaged in their IORP activities and either steer the IORP's board to make investments reflecting their preferences, or directly taking those decisions.

The inclusion of such information in the PBS would not represent a major additional administrative burden, as the content represents a summary of the information already provided by IORPs under SFDR in the financial product disclosure templates in Annexes II to V of Delegated Regulation 2022/1288. Hence, ShareAction welcomes EIOPA's suggestion on the matter, but would encourage a rewording of the following addition to art. 39(1) as follows to reflect the complementary, rather than mutually exclusive, nature of the two options:

"the lines of "summary information regarding the extent to which sustainable investments, as defined in Article 2(17) of Regulation (EU) 2019/2088 and taxonomy-aligned investments, as defined in Article 5 and 6 of Regulation (EU) 2020/852 are made by the IORP and, where applicable, whether the investment options selected have sustainable investment as their objective or promote environmental or social characteristics in accordance with Regulation (EU) 2019/2088".

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

We support EIOPA's suggestion of including information about the risks, costs and returns (ideally both financial and non-financial) of the options selected. This would also increase the visibility of sustainability-related factors and facilitate their streamlining across the information provided in the PBS. Additionally, we would welcome a provision enabling active members to request reception of the pension benefit statement more frequently, so as to develop more ownership of their decisions and increased oversight of the estimations they entail.

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)?

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.

We support EIOPA's proposal on additional requirements regarding cost transparency, and believe that the main challenge in implementing them would come from opposition from the industry. Such measures are indeed necessary to provide complete, clear, and accurate information on costs to members and perspective members. This, in turn, will provide them with a better understanding of the impact of costs on the evolution of their pension entitlements while also allowing them to make more informed investment choices.

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.

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?

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.

Yes, we do. It is important that members are engaged in IORP's activities from the beginning, thus effectively co-creating their pension scheme rather than accepting a top-down product that does not reflect their needs and preferences. This would ensure a better governance, transparency and accountability of the IORP, but also more stability, longer-term planning, and possibly more investments given the higher degree of trust from members. This is why introducing requirements to ensure the appropriate structuring and implementation of pension schemes by IORPs is very relevant, and even necessary.

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.

We welcome EIOPA's suggestions, but recommend editing as indicated below for completeness.

- The appropriateness of the choices made in view of the identified needs and preferences of members and beneficiaries;
- The related internal procedures, including documentation of the choices made and their rationale, also considering sustainability and diversity and inclusion factors;
- The regular review of the appropriateness of the choices made, taking into account any material developments and/or change in preferences.

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 member and beneficiaries? Please explain and, if yes, what types of responsibilities and expectations should, in your view, be placed on IORPs in this regard?

Yes, we do. In addition to transparency and disclosure requirements, the introduction of duty of care principles would ensure IORPs act in the best interests of their members. A duty of care for IORPs should be applied beyond circumstances when members are being consulted on decisions. It should also place a responsibility and expectation for IORPs to seek to understand members broad sustainability preferences in order to understand what is in their best interests and ensure that they act in these interests in all areas of decision-making.

At the same time, IORPs should be responsible for providing timely, clear, and comprehensive information to members and beneficiaries about the options they have and their investment decisions. They should support members and beneficiaries in their choices by providing adequate risk assessment tools about their available or selected options. IORPs should also assist members and beneficiaries with unbiased and evidence-based advice allowing them to make choices that are in their best interest and in line with their preferences. In order to do this, their personnel should be adequately trained and updated about latest trends and developments.

We believe that knowing that IORPs have such obligations would empower members to be more engaged

and take more ownership on their investments. Additionally, increased trust in IORPs could lead to more savings, and consequently more investments and returns.

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

ShareAction supports EIOPA’s suggestion for advice, and recommends adapting it as follows to reflect the considerations made above:

“Taking into account the nature of the pension scheme established and in particular where members and beneficiaries bear risks, Member States shall ensure that every IORP registered or authorised in their territories acts fairly and in accordance with the best interests of members and beneficiaries, and in doing so, must seek to ascertain beneficiaries views in order to understand their best interests, as well as provide prospective members, members and beneficiaries with the necessary clear information, adequate risk assessment tools and evidence-based advice to properly assess and compare the choices or options provided by the IORP and take informed decisions. ”

Do you have any other comments on the following sections of Chapter 4?

	Yes	No
* Section 4.2.1 General evaluation of the functioning of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.2 Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.3 Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.4 Structure and format of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.5 Information in the PBS on sustainability factors	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.2.6 Other considerations regarding the contents of the PBS	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.3 Digitalisation	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.4 Transparency on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.5 Projections (Information on potential retirement benefits)	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.1 Appropriate structuring and implementation of the scheme	<input type="radio"/>	<input checked="" type="radio"/>
* Section 4.6.2 Duty of care	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 5. Shift from Defined Benefit to Defined Contributions

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

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?

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?

Increased transparency on annual costs and charges benefits members and beneficiaries as it allows them to better analyse DC IORPs practices, allowing members and beneficiaries to compare IORPs and make informed choices in line with individual preferences, including in terms of sustainability.

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 believe the provision of a high-level overview of NCAs' risk assessment framework would bring the following advantages:

- Increased transparency on the priorities and expectations of supervisors;
- Increased transparency on IORPs' conduct and practices;
- Prospective members can make more informed choices and better compare between different IORPs;
- Members can become more engaged in their IORP's activities, acquire more ownership over the board's or their decisions in matters that have a direct impact on the members and beneficiaries themselves, and even mobilize to push for change, if necessary.

Do you have any other comments on the following sections of chapter 5?

	Yes	No
* Section 5.2: Europe and European Pensions Markets are shifting	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.3: Background information on Defined Contributions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.4: Previous EIOPA Reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5: Policy options to address the shift to DC	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.1: Long-term risk assessment	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.2: Supervisory reporting on costs and charges	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.3: Complaints procedure and Alternative Dispute Resolution (ADR)	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.4: Article 51.2 - Increased transparency of National Competent Authorities – Risk assessment framework	<input type="radio"/>	<input checked="" type="radio"/>

* Section 5.5.5: Financial education	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.6: Member and/or beneficiary involvement in IORPs governance	<input type="radio"/>	<input checked="" type="radio"/>
* Section 5.5.7: Fit and proper requirements	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 6. Sustainability

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

ShareAction welcomes the emphasis placed on sustainability risks and the introduction thereof throughout the recommended requirements. This would ensure that the consideration of such risks is mainstreamed across IORPs' activities, from ORA and risk management to investment decision-making, internal governance and remuneration policy, while aligning the language and ambition of the Directive with those of other regulatory frameworks. For instance, alignment with Solvency II is crucial for regulatory coherence and the preservation of the level playing field, namely in remuneration. EIOPA advises to include in Article 23 of the IORP II Directive the following provision: "The remuneration policy shall include information on how the IORP takes into account the integration of sustainability risks in the risk management system".

Similarly, amendments to Solvency II supported by ShareAction call for linking at least half of the variable component of remuneration schemes (where present) to the achievement of sustainability targets set as part of the transition plan of the undertaking. Ensuring consistency should thus be a priority.

Introducing sustainability requirements might involve costs in the short term to adapt processes and systems; nonetheless, these costs will be outweighed in the long term by benefits including IORPs' resilience and overall stability of the economy and financial system brought by responsible investments. This is why it is important that IORPs comply with such requirements without the possibility of "avoiding by explaining" and according to "the nature, scale and complexity of their activities" as suggested by EIOPA.

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))?

IORPs should be required to consider sustainability factors in investment decision-making by default, as sustainability impacts pose a financial risk to members and beneficiaries, as well as a risk to broader aspects of beneficiaries' best interests, such as mitigating climate change to ensure they retire into a healthy and liveable planet. Financial and other motivations are not mutually exclusive, as EIOPA pointed out in an opinion in 2019, "to reduce the risk exposure of IORPs towards ESG risks is likely to help IORPs in the pursuit of sustainability goals [and] conversely, considering the long-term impact of investment decisions on ESG factors can contribute to mitigating IORPs' exposures to ESG risks"¹.

We therefore support an "opt-out" rather than "opt-in" approach to considering sustainability on the principle of 'presumed consent'², as considering sustainability would benefit members and beneficiaries in the long-term. Further, we would argue that rather than solely reflecting the short-term preferences of members' and beneficiaries' on sustainability issues or decisions as they arise, IORPs should be required to proactively seek to ascertain the preferences of beneficiaries as this is integral to understanding what is in their best interests.

It is important, that IORP managers are required to act in a way that is in the best interests of members and

beneficiaries as a whole, and in a way that is fair between beneficiaries, including as between present and future beneficiaries and fair to the needs of different member groups with different characteristics. Due to this, IORP managers must retain some discretion to enable them to consider these dynamics, rather than being permitted or required to act on the short-term preferences of members where they may not be aligned with the broader membership's best interests. For example, if a cohort of members express preferences that are not aligned with what the IORP deems to be in the best interests of the members as a whole on sustainability factors, the IORP should be able to adapt the instructions received. Additionally, we welcome EIOPA's suggestion on requiring IORP's remuneration policy to include information on how it takes into account the integration of sustainability risks in the risk management system, as in Solvency II. This would link the management board's remuneration to the sustainability performance of the IORP, thus tackling greenwashing initiatives.

Similarly, if the requirement to consider sustainability factors is not the default option, members and beneficiaries should also be granted the opportunity to influence IORPs activities by expressing their preferences and push for ESG factors to be considered when making investment decisions.

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))?

Sustainability considerations and other investment objectives of the prudent person rule are intertwined but not mutually exclusive. Members and beneficiaries may deem the well-being of our planet and society as being in their long-term best interests, separate to considerations of returns. Indeed, they may even prioritise ensuring a healthy planet and society over maximising returns.

Simultaneously, while sustainable investment approaches might be less profitable at an entity or sectoral level in the short term, they are lower risk over the long-term. They support activities that entail less long-term risks for people and planet and help to ensure overall financial and economic stability and security, thus protecting members financial and broader best interests.

For example, in 2022, the six largest western oil companies made more money than any year in history³. In the short-term, this poses an incredibly profitable prospect for investors, but over the long-term, it's estimated that the risks from global stranded assets in the upstream oil and gas sector could equate to \$1tn USD, the financial risk of which will likely be borne by pension savers⁴. Similarly, sustainability issues such as negative impacts on population health or biodiversity may be profitable at an entity-level in the short-term (for example, a company that derives its profits from producing products high in fat, salt and sugar) but may cause a drag on broader economic outputs that would negatively impact portfolio returns for IORPs when considered across the portfolio and with a long-term view on investment return.

Hence, sustainability considerations should be at the core of the prudent person rule, to ensure they are considered by default when making investment decisions.

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?

Stewardship is an effective and crucial strategy to address sustainability risks, as it mobilizes IORPs influence as long-term investors to drive change in investee companies. Stewardship is particularly important in order for IORPs to address systems-level sustainability-risks (such as climate change, population health or biodiversity loss) as these are risks that IORPs cannot mitigate through diversification as these risks will impact all areas of IORPs investment portfolios.

In order to sufficiently address sustainability risks, all IORPs must have strong and robust stewardship policies with escalation strategies in place, to proactively mitigate sustainability risks to members and beneficiaries. This should be a default requirement of IORPs, but should integrate members and beneficiaries' sustainability preferences, for example by identifying particular priority issues that beneficiaries' deem in their best interests.

To ensure IORPs have sufficient stewardship policies in place, strong and mandatory stewardship rules covering responsible investment factors (following the example set in recital 16 of the Regulatory Technical Standards under the Sustainable Finance Disclosure Regulation) as well as requirements for IORPs to disclose the effectiveness of their engagement should be developed and enforced across IORPs. Additionally, voting disclosure should be mandated, including by setting a compulsory timeframe, and developing guidance for a framework of what good voting disclosure looks like. Complementarily, regulators should be empowered with clear mandates to supervise and, where necessary, penalise poor performance on responsible investment practices, including in stewardship.

Stewardship mainstreaming across IORPs allows to pursue the best interest of members and beneficiaries by working for a more sustainable and prosperous economy and society. This complements the scope of the SRD II, which clearly aims at improving companies' sustainability impacts while not obliging IORPs to pursue this aim actively, by underlining IORPs' key role and leverage. That is why IORPs should be prevented from using the "comply or explain" approach when it comes to stewardship, and should instead prepare and issue an engagement policy proportionate to the nature, scale and complexity of their activities. Once again, the Regulatory Technical Standards under the Sustainable Finance Disclosure Regulation (SFDR) provide a good example of this in article 8 on Engagement Policies.

Do you have any other comments on the following sections of chapter 6?

	Yes	No
* Section 6.2: Relevant provisions in IORP II Directive and other regulations	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.4: Other regulatory background	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.5: The integration of sustainability factors in investment decisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.6: The fiduciary duties	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.7: Stewardship	<input type="radio"/>	<input checked="" type="radio"/>
* Section 6.8: Broader societal goals	<input type="radio"/>	<input checked="" type="radio"/>

Chapter 7. Diversity and Inclusion (D&I)

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

ShareAction welcomes EIOPA's recommended requirements on D&I in management bodies as a way to enhance diversity and inclusion in recruitment, remuneration, and overall governance and decision-making across IORPs, although the requirements seem to focus more on diversity than on inclusion.

As pointed in the discussion paper, this will align IORPs to other sectors (such as banking) where similar

requirements have already been introduced, and ensure consistency across them. That is why ShareAction also welcomes the introduction of a European legal definition of diversity and inclusion.

Additionally, complying to the recommended requirements will have implications on IORPs' internal and external activities, for instance by taking into account diversity across the membership and by enhancing support for sustainability-related considerations, practices, and investments. This will avoid group-thinking and mobilize the different sensitivities of management bodies, with positive implications for both IORPs, the environment, and society as a whole.

However, IORPs should not be granted the possibility to avoid compliance by explaining: they should rather be required to develop a D&I policy that is tailor-made and proportionate to IORPs' nature, scale and complexity of their activities while also ensuring a minimum level of compliance across IORPs. Finally, D&I policies should be actively monitored and reported on to be able to have a successful impact.

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?

ShareAction welcomes the recommendation of elaborating a European definition of diversity and inclusion to be applied across all financial services sectors. This will ensure consistency in terms of requirements and ambitions, while also setting the framework for further actions and improvements to the current setting.

Below is the list of criteria to be included in the definition:

- Physical appearance
- Age and generation
- Disability
- Neurodiversity
- Physical and mental health-related issues
- Gender and gender identity
- Sexual orientation
- Religion and spirituality
- Socio-economic/cultural background
- Education
- National origin
- Familial status
- Language, linguistics and accents
- Care-giving responsibilities
- Life experiences.

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?

ShareAction welcomes the public disclosure of the above-mentioned targets and policies as a way to enhance transparency and accountability, but also engagement on the topic of diversity and inclusion because of the possible reputational implications for the IORP.

Nonetheless, public disclosure in the annual report should not be limited to gender alone, but rather provide information on the complete spectrum of diversity criteria. Hence, IORPs diversity and inclusion policy should be made publicly available in its entirety to allow prospective members to compare institutions based on their commitments and governance practices beyond their investment activities, given that the former

have an influence on the latter.

D&I policy should be considered and dealt with as a single block of targets and provisions of equal importance and in relation to one another. That is why reporting to NCAs should not solely cover the section of the D&I policy regarding the selection of members of the management body and its objectives, but rather offer a more comprehensive overview of the relevant strategy and commitments. This will likely already be the case for SFDR, which will potentially go beyond gender to also include disability and as such pave the way for similar provisions to be introduced across legislation in the same field.

Do you have any other comments on the following sections of chapter 7?

	Yes	No
* Section 7.2: Relevant legal provisions	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.3: Previous EIOPA reports	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.4: Some national practices	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.5: D&I in management bodies	<input type="radio"/>	<input checked="" type="radio"/>
* Section 7.6: Reporting on D&I	<input type="radio"/>	<input checked="" type="radio"/>

Annexes

* Do you have any comments on the annexes?

- Yes
 No

Any other comments

* Do you have any other comments on the consultation paper?

- Yes
 No

Contact

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