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26th of February 2026

Presidency discussion paper on amendments to IORP II Directive

26 February 2026 10.00 JL

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Introduction

On 20 November 2025, as part of a package of measures to help citizens secure adequate income in retirement by improving access to better and more effective supplementary pensions, the European Commission proposed the amendment of the Directive on Institutions for Occupational Retirement Provision (IORP) II with the aim to strengthen and modernise the framework to better support efficiency, scale and trust in supplementary pensions. The amending Directive was presented to Member States (MS) by the Commission on 1 December along with the Staff Working Document that assessed the impact of the proposed amendments. MS were invited to provide the Presidency (PCY) with written comments by the 19th of December in preparation for Council Working Party (CWP) examination of the text from January onwards.

A second CWP, the first under the CY PCY, was held on 30 January. It focused on scope, definitions, activities of IORPs and provision by IORPs of personal pension products, proportionality criteria and operating requirements, authorisation, multi-sponsor IORPs, establishment and freedom of services, cross border activities and procedures.

Purpose of the discussion

The purpose of this paper is to provide the basis for discussions on the proposed amendments to Directive (EU) 2016/2341 ("the Directive") for a number of selected subjects at the CWP meeting of 26 February. For each particular subject, the paper includes a description of the contents of the proposed amendments, the views already received from Member States in relation to that particular subject, and any relevant clarifications already received from the Commission.

For each item, Member States are invited to express their views and send their comments.

Topics of discussion on the IORP proposal

This note serves to structure the debate which will focus on:

- Cross-Border and Domestic Transfers – Art. 12 and 12a
- Title II – Quantitative Requirements – Art. 13-19
- Title III – Conditions governing activities – Art. 20-35
- Title IV – Chapter 4 – Business conduct rules - Art. 44a-44d

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1. Cross-Border and Domestic Transfers – Art. 12 and 12a

1.1 Cross Border Transfers – Article 12 and recital 20

1. Content of the proposal

Article 12 updates the framework for cross-border collective transfers of all or part of a pension scheme's liabilities, technical provisions, and other obligations, as well as corresponding assets between IORPs. The Commission considers that such transfers (also domestic) can play a productive role in facilitating consolidation and supporting the achievement of scale in occupational retirement provision.

The amendments are limited to aligning the definition of majority in the context of cross-border transfers, in order to ensure legal clarity in relation to approval requirements and voting arrangements and facilitate more workable approval mechanisms.

Paragraph 3 clarifies and further harmonizes the approval conditions applicable to cross-border transfers. The proposal specifies that a transfer shall be subject to prior approval by a simple majority of the members and beneficiaries concerned, or where applicable a simple majority of their representatives, as well as by the sponsoring undertaking where relevant. It further clarifies that the simple majority is to be calculated based on received responses.

The introduction of a harmonized definition of the majority required to approve a cross-border transfer, is in line with EIOPA's technical advice in the review of the IORP II Directive and replaces divergent national interpretations of 'majority' under the current framework that have in practice made cross border transfers difficult to execute.

The clarification regarding the majority, follows EIOPA's finding that the absence of a uniform Union definition of the majority required for approval, constitutes a structural obstacle to cross-border activity and consolidation, a concern also echoed by the European Court of Auditors.

Compared to the current text of the provision, the proposal removes the requirement for a double majority while clarifying that a simple majority is sufficient.

The term 'representatives' already forms part of the current IORP framework and has not so far, given rise to particular interpretative difficulties. In practice, representatives may include work councils, trade unions, or general assemblies composed of employees that are not necessarily members of a trade union.

As an additional safeguard, in paragraph 3 Member States are allowed to introduce a minimum participation threshold, provided that it does not exceed 25% of the members and beneficiaries concerned. This option enables Member States to ensure a minimum level of engagement, while encouraging thresholds that preserve the effectiveness of the harmonized approval rule.

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The rules on a simple majority of members and beneficiaries or, where applicable, a simple majority of representatives reflect an aim to facilitate cross-border consolidation of IORP schemes. Challenges related to obtaining majorities or meeting quorum requirements in the context of consolidations have also been criticized by the European Court of Auditors.

This rule should not, however, be interpreted as reducing requirements for good governance and transparency. According to paragraph 2a, which relocates the third sentence of current Article 12(3)(a), the conditions of the transfer should be made available in a timely manner by the transferring IORP to the members and beneficiaries concerned, and where applicable to their representatives, in a timely manner, before the submission of the application referred to in Article 12(4). A timely manner could be at least a month prior to the application or any other timeframe that the social partners involved in the transfer deem suitable for a proper assessment of the "conditions of the transfer" by members and beneficiaries. This amendment reinforces early transparency, ensuring that affected members and beneficiaries are properly informed, thereby facilitating their participation in the approval decision-making process.

To avoid any doubt, there is no substantive change to Article 12(11) regarding the exchange of information between competent authorities.

Furthermore, for clarity, it should be noted that Articles 12 and 12a govern transfers between IORPs and do not apply to transfers between an IORP and a non-IORP entity (e.g., an insurance undertaking).

2. Member States' views

Several MS requested clarifications on certain aspects of the article. In relation to the approval of cross-border transfers, a number of Member States underlined the importance of applying and respecting national rules and emphasised that the rules of the home Member State should prevail.

One Member State suggested introducing a double majority requirement in order to further safeguard the interests of beneficiaries.

In addition, several Member States expressed concerns regarding the calculation of the simple majority and the participation threshold.

3. Questions

Q1: Do MS support the proposed harmonised framework for cross-border transfers, including the use of a simple majority for approval of members, beneficiaries, or their representatives and the minimum participation threshold? If no, please explain/elaborate. Are there potential areas where further clarification is needed?

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Q2: In the event that practical challenges are foreseen in implementing the revised cross-border transfer framework, do MS suggest any measures to ensure a smooth implementation?

1.2 Domestic Transfers – Article 12a and recital 21

1. Content of the proposal

Article 12a introduces minimum rules for domestic transfers between IORPs authorised within the same Member State, with the aim of ensuring simple and transparent procedures while safeguarding the protection of members and beneficiaries and the continued sound management of the pension schemes concerned.

With a view to fostering domestic consolidation where appropriate, Member States should ensure that simple, transparent and operationally efficient procedures are in place to enable the restructuring and consolidation of pension schemes within their territories. Such procedures should contribute to the achievement of scale and improved cost efficiency, while ensuring adequate protection of members and beneficiaries.

Article 12a establishes minimum requirements aimed at reducing unnecessary national barriers that may discourage collective transfers and hinder the achievement of scale, cost efficiency and enhanced professional management, ultimately to the detriment of members and beneficiaries. In this context, where domestic transfers are subject to prior approval by members and beneficiaries, the applicable approval procedure may not be more stringent than that provided for cross-border transfers under Article 12.

The new provision further requires that domestic transfers be subject to prior approval by the competent authority. The competent authority must verify at least the completeness and accuracy of the information submitted, the soundness of the IORPs concerned and the fitness of those who effectively run them, the adequate protection of the long-term interests of members and beneficiaries, and the sufficiency and appropriateness of the assets transferred to cover the corresponding liabilities.

2. Member States' views

While some Member States supported the provision, several others raised concerns, highlighting the additional administrative burden and the potential obstacle it may pose to facilitating the consolidation of IORPs.

Member States also sought further clarification regarding the procedure and its practical implementation.

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3. Questions

Q3: Do MS support the introduction of minimum rules for domestic collective transfers between IORPs within the same Member State? If yes, do MS consider this framework likely to facilitate consolidation, improve cost efficiency, and strengthen professional management while safeguarding members and beneficiaries? If not, please explain/elaborate.

Q4: Do MS agree with the requirement that domestic transfers be subject to prior approval by the competent authority?

Q5: Are the proposed criteria for approval (accuracy of information, soundness of IORPs, fitness of managers, protection of members, sufficiency of assets) clear and feasible to implement?

Q6: In the event that practical challenges are foreseen in implementing the minimum rules for domestic transfers, do MS suggest any measures to ensure a smooth implementation of domestic transfers while taking national specificities into account?

2. Title II – Quantitative Requirements – Art. 13-19

Purpose of the discussion

This item intends to present the amendments introduced in the proposal concerning Technical Provisions (Articles 13 and 14), Regulatory Own Funds (Art. 15), Available and Required Solvency Margin Articles (16, 17 and 18), Stress Testing (Art 18a), Investment rules (Art.19) and to take note of Member States' reactions and concerns. For each item Members are invited to express their views.

2.1. Technical Provisions (Art. 13 and 14)

1. Content of the proposal

Article 13

The requirements for establishment of adequate amount of liabilities in respect of all the pension schemes remain the same, and they apply to occupational, and also to personal pension schemes, where these permitted.

In paragraph 2 the requirement for an IORP which itself, and not the sponsoring undertaking, underwrites cover against biometric risk or guarantees either an investment performance or a given level of benefits, to have appropriate assets to cover technical provisions remains the

same, and the word "occupational" is deleted, while keeping the wording "pension schemes" in order to cover both occupational and personal pension schemes which provide such cover or guarantees.

Article 14

The requirement for having sufficient and appropriate assets to cover the technical provisions for all pension schemes remains the same.

The wording "Member States shall ensure that their competent authorities have the necessary powers…", is introduced, so that it becomes mandatory for all MS to empower their CAs to allow for temporary underfunding for a limited period of time.

A new subparagraph is added stating that the limited period of time, (timeline), referred to in the introductory wording, shall in any case not exceed 10 years.

As PCY understands it, setting a maximum recovery period at a level which is not too short nor too long, aims on the one hand, to grant flexibility to Member States to determine a shorter period under national Law, taking in consideration the local practices and circumstances, and, on the other hand, provides a ceiling in order to ensure that underfunding is genuinely temporary. A deficit persisting beyond such timeframe, would likely point to inability of the IORP to restore compliance, not because of temporary market fluctuations, but due to internal structural and funding weaknesses.

Recital 22 of the proposal explains the rationale for this amendment. While ensuring full funding at all times remains a key objective of supervision, an absolute prohibition of underfunding would imply that any funding shortfall should be remedied without delay. However, the management of pension schemes is inherently long-term, and where the sponsoring undertaking is not in a position to provide immediate financial support, the prompt elimination of the underfunding could, in practice, require abrupt reductions in pension promises, which would likely be detrimental to members and beneficiaries.

Finally, paragraph 3, relating to the requirement for fully funded technical provisions in the event of cross border activity, is removed. As PCY understands it, the purpose of removing this paragraph is to secure equal prudential treatment between domestic and cross-border activities, taking in consideration that this requirement has been considered discriminatory by the European Court of Auditors (ECA Special Report 14/2025).

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2. Member States views

Article 13 - No comments received. There was just one request for clarification.

Article 14 - Many MS questioned the reasoning behind the 10 years threshold to address underfunding, raising concerns in particular for consumer protection, and several MS highlighted this should remain a MS discretion.

3. Questions

Q7: Art. 14 Do MS agree with the proposed changes? If not, please explain.

Q8: Art. 14 Do MS think that despite having a maximum timeline defined in the Directive, some flexibility should be provided to Member States to allow for some extra time, in case this is deemed necessary?

2.2 Regulatory Own Funds (Art. 15), Available and Required Solvency Margin (Articles 16, 17 and 18)

1.Content of the proposal

Article 15

The requirement for an IORP which itself, and not the sponsoring undertaking, underwrites cover against biometric risk or guarantees either an investment performance or a given level of benefits, to hold additional assets above the technical provisions to serve as a buffer, remains the same.

Article 16

The provision keeps the existing requirement for an available solvency margin equal to the assets that are free of any foreseeable liabilities minus intangible items, such as paid up capital, other reserves, etc, for an IORP which itself, and not the sponsoring undertaking, underwrites cover against biometric risk or guarantees either an investment performance or a given level of benefits.

Paragraph 1 is replaced with a new one which makes some re-wording without changing the meaning of the existing paragraph 1, while at the same time it introduces reference to personal retirement provision, where this is permitted by national law. (A typo correction is required here in terms of the word “provision”).

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In paragraph 4, the second sub paragraph is replaced with a new one which introduces in the calculation of the capital sums, the relevant amounts for personal retirement provision activities, where these are allowed.

The reference to "the mathematical provision for all policies for which Zillmerizing is possible..." remains the same. The same holds for the reference to ".... reduced by an amount of any undepreciated acquisition cost".

Article 17

Paragraphs 1 - 6 remain the same. The methodology for calculating an IORP's required solvency margin dates back to the first Life Insurance Directive and has remained unchanged since then. Given the evolution of market practices, supervisory approaches and life expectancy, it could be claimed that the numerical parameters used in the calculation may prove outdated and conservative.

As no concrete evidence or technical analysis has been provided so far to justify a change, whereas this may be deemed necessary in the future, a new paragraph is introduced which provides for the possible adjustment of the numbers and percentages included in Articles 17 and 18, through Commission delegated acts.

As PCY understands, the adoption of a delegated act does not necessarily entail the adoption of a supplementing delegated act, as non-essential amendments may also be effected directly at Level 1. As PCY also understands, the empowerment given to the Commission to adopt a relevant delegated act could be used only when deemed necessary, based on concrete evidence and technical analysis and taking in consideration the prevailing economic environment and practices.

Article 18

In relation to article 18, there is no change in the provision based on which the required solvency margin shall be determined based on the method and parameters stipulated therein, and on the basis of either the previous year's premiums or contributions or on the basis of the average claims for the past three financial years, whichever of the two results is bigger. As already mentioned in the description of Article 17 above, the numbers and parameters in Article 18 could also be adjusted in the future, through Commission delegated acts.

2. Member States views

Article 16 - While some MS agreed with the revised provision, others asked for minor wording changes or clarifications, in particular regarding the terminology used.

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Article 17 – Many MS questioned the need and the opportunity for the DA empowerment, stressing that requirements should be potentially set at L1, without leaving too much flexibility to the Commission when drafting the Level 2.

Article 18 - No comments received.

3. Questions

Q9: Art. 16 - Do MS agree with the proposed changes and the wording and terminology used therein? Do MS have any suggestions as to how the DA empowerment could be further framed?

Q10: Art. 17 - Do MS agree with the provisions of new paragraph 7 in this article? Are MS aware of any evidence which could indicate the need for revision of the existing numbers and parameters specified in this Article? If so, please explain.

Q11: Art. 18 - Even though no comments were received on this Article, do MS have any questions to make and or clarifications to request?

2.3 Internal Stress Testing – Art. 18a

1. Content of the proposal

Under current rules, IORPs which themselves, and not the sponsoring undertaking, underwrite biometric risks or guarantee investment performance or a level of benefits, are required to hold a solvency margin acting as a capital buffer in excess of technical provisions, based on Art. 15(1) and (2), and Member States have the option to impose stricter requirements in accordance with Art. 15(3).

In Member States where the option foreseen in Article 15(3) is not implemented, the required solvency is not risk-based, i.e. it does not reflect the actual riskiness of the investment portfolio on the exposure to longevity risk. Instead, it is linked to crude indicators, such as the mathematical provisions or the capital at risk based on the size of the IORP's activities. As a result, the quantitative framework in such cases may not always ensure a sufficient level of protection for members and beneficiaries.

Through the provisions of Article 18a, an obligation to carry out an internal stress test at least every three years is introduced, for IORPs, which themselves, underwrite cover against biometric risk or guarantee either an investment performance or a given level of benefits.

The purpose of the internal stress test (IST) is the assessment of the IORPs ability to meet its obligations, under specific scenarios relating to adverse market and demographic developments.

As PCY understands it, the requirement for an IST aims to improve the calculation of the required solvency margin, and enhance protection of members and beneficiaries, in the cases where risk-based capital requirements under national law are not required.

The competent authority is given the power to request stress tests more frequently if there is a risk of the assets not being sufficient to cover the technical provisions during the next 10 years. The competent authority is also given the power to request an assessment whether the projected available solvency margin, as defined in article 16, exceeds the required solvency margin, as defined in article 17, or where applicable, any higher regulatory own funds which are required under national law pursuant to article 15.

The duration of the IST is set to 10 years, and the assumptions for a baseline scenario, an adverse scenario relating to interest rates, an adverse scenario relating to a decline in investment returns and a scenario relating to a decrease in mortality rates, are also defined in paragraph 2 of article 18a.

As per the provisions of paragraph 3, in case the results of the stress test indicate that under any of the scenarios referred to in paragraph 2, the IORP would "either have insufficient assets to cover the technical provisions or, where applicable, have insufficient available solvency margin to meet the required solvency margin, or any higher level of .....", the competent authority is given the power to require the IORP to submit a convergence plan. The requirements relating to the convergence plan, its contents and the time frame for its submission, are defined in the same paragraph.

The proposal provides also that, if a convergence plan is not submitted or the submitted convergence plan is not satisfactory, the competent authority has the power to require the IORP to hold higher available solvency margin. The opportunity to impose a higher solvency margin and the level of that margin is left to the full discretion of the competent authority.

As requiring full funding under stressed conditions from such IORPs would not be appropriate, in paragraph 4 it is clarified that paragraph 3 shall not apply where an IORP is permitted, pursuant to Article 14(2), to have insufficient assets to cover the technical provisions for a limited period of time, and in that case a recovery plan has to be adopted, as per Article 14(2). The IORP is expected to reflect the outcome of the stress test referred to in paragraph 1, within the recovery plan, and take into consideration possible deteriorations in prevailing market or longevity conditions, when designing the measures to restore full funding.

Finally, in order to avoid duplication, in paragraph 5 it is clarified that Member States may decide not to apply paragraphs 1 to 3 in cases where they require IORPs located in their territory to hold regulatory own funds, in excess of the required solvency margin referred to in Article 17, provided that such regulatory own funds requirements are risk-based, at least in relation to market and longevity risks.

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2. Member States views

Many MS questioned the provision for ISTs, and also in light of the existing EIOPA stress tests, and they raised concerns in terms of proportionality.

Several MS pointed out that the new Article is too prescriptive in particular regarding the detailed scenario requirements. Some MS stressed that a more flexible, principle-based approach would be preferable.

Other MS supported the provisions and the introduction of internal stress testing for ensuring the prudent management of an IORP's activities and risks.

Some asked for clarifications on the chosen level of percentages or stressed that the assumptions should be adaptable to the specific pension product and the specific capital market situation.

Several MS asked for additional clarifications regarding the carve-out and the risk-based approach.

3. Questions

Q12: (a) Do MS agree with the overall approach of introducing an obligation to carry out internal stress tests at least every three years, for those IORPs which themselves underwrite covers or provide guarantees?

(b) Do MS think that this obligation to carry out ISTs for specific scenarios which are defined in this Article, should be part of the IORPs' Own Risk Assessment (ORA), and their relevant obligation to conduct ISTs within their ORA?

Q13: Do MS agree with the inclusion of specific scenarios with specific parameters in the Level 1 Legislation? If not, please explain.

Q14: With regards to the "waiver" for carrying out these ITSs, in case the IORPs are already required under national law to hold "risk-based" regulatory own funds, in excess of the required solvency margin referred to in Article 17, do MS think that the term "risk-based" should be further specified in the proposal?

2.4 Investment rules – Article 19

1. Content of the revised proposal

The Commission proposes to amend Article 19 in order to refine and reinforce the application of the prudent person principle as the core standard governing IORP investments. Rather than introducing a new concept, the proposal clarifies how the existing principle must be operationalised, with a stronger focus on risk identification, liability alignment and proportionality, and a reduced reliance on detailed, compliance-driven investment constraints.

The prudent person principle entails that a pension scheme's investment framework should be risk-based, allowing IORPs to invest in any type of asset, if they can properly identify, measure, monitor, manage and report the associated risks. According to the proposal, as a safeguard for members and beneficiaries, the possibility for Member States to apply investment restrictions should be limited to cases where the investment risk is borne by members and beneficiaries, and those restrictions should not result in a blanket prohibition on investing in certain asset classes.

In PCY's understanding the proposal also aims to address the divergent national implementations of the current prudent person rule. The revised framework aims to re-anchor investment supervision in a principle-based, fiduciary and portfolio-level assessment, while preserving the possibility for targeted supervisory intervention where prudentially justified.

The proposed amendments can be grouped into three main elements:

a. Clarification and strengthening of the prudent person principle

The Commission's proposal replaces the reference to the prudent person *rule* with the prudent person *principle*. This change clarifies that the applicable legal standard is not based on predefined prohibitions or quantitative limits, but on a fiduciary duty to manage investments prudently in the interests of members and beneficiaries.

In line with the EIOPA technical input, new paragraphs 1a and 1b specify how this principle must be applied in practice.

IORPs may invest in any asset class, provided that they are able to properly identify, measure, monitor, manage, control and report the associated risks. This makes explicit that the principle applies at the level of the overall portfolio and risk governance framework, rather than through asset-by-asset restrictions.

Furthermore, assets covering technical provisions must be invested in a manner appropriate to the nature and duration of the IORP's liabilities. This strengthens the link between investment

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policy and liability structure. As such, the prudent person principle is directly related to sound risk management and asset-liability considerations.

Overall, these amendments shift the focus from compliance with ex-ante limits to portfolio diversification, suitability and effective risk governance, in line with the long-term nature of pension obligations.

b. Reduced scope for national quantitative investment limits

The proposal amends paragraph 6 of Article 19 to clarify and narrow the circumstances under which Member States may empower competent authorities to lay down more detailed investment rules.

It is the PCY's understanding that under the revised provision, such rules remain possible only where they are **prudentially justified,** as under the existing Directive, and **where the investment risk is borne by the members and beneficiaries** (aka "defined contribution" schemes), in accordance with Article 133(3) of the Solvency II Directive. This represents a clarification and a narrowing compared to the current framework, under which Member States laws have made broader use of quantitative investment restrictions.

Where such limits are allowed, competent prudential authorities are better placed to determine whether they are prudentially justified.

Even in cases where such additional limits are permitted, they must not amount to blanket prohibitions or undermine the core elements of the prudent person principle. In particular, IORPs must not be prevented from achieving appropriate diversification or from investing in a broad range of asset classes consistent with their investment strategy and risk profile.

This change reinforces the role of the prudent person principle as the primary investment standard by implying that IORPs should by default be able to invest across all suitable assets classes with the aim of achieving diversification and the best risk-return balance.

Paragraph 7 which provided for the right of MS to require IORPs to apply more stringent investment rules on an individual basis provided they are prudentially justified and paragraph 8 which provided that host MS could not lay down investment rules for the part of assets covering cross-border activity, have been deleted.

c. Introduction of sustainability preferences of members and beneficiaries

The proposal embeds a sustainability framework into IORPs investment governance as IORPs are required to take into account sustainability risks and the long-term impact on sustainability.

In line with suggestions contained in the EIOPA advice, the proposal introduces new paragraphs 1c and 1d, requiring that, where IORPs are able to gauge them, the investment decisions of IORPs should reflect the **sustainability preferences of members and beneficiaries**.

This obligation applies only where IORPs are able to meaningfully assess those preferences and only to the extent that taking them into account remains consistent with the core investment principles set out in paragraph 1, notably security, quality, liquidity, profitability and diversification. The provision therefore does not constrain asset allocation choice, nor does it override prudential considerations.

For the purposes of this requirement, sustainability preferences are defined in line with sustainable finance legislation and relate to the extent to which members wish their investments to include environmentally sustainable investments, sustainable investments more broadly, or investments that consider principal adverse impacts on sustainability factors.

The objective is to better align long-term retirement savings with the expressed preferences of members and beneficiaries, while preserving the primacy of prudential investment standards and the fiduciary duty to act in their best financial interests.

2. Member States' views

Diverging views were expressed on the reliance on Prudent Person Principle. Some MS supported the shift from a rules-based to a principle-based prudent person approach, others strongly opposed and called for further analysis of the proposed amendments and their implications. In terms of scope of application, many MS questioned how the provisions apply to "defined benefit" (DB) schemes and collective investment structures.

Concerns were raised as to whether the rules apply only where members bear investment risk and/or only to assets covering technical provisions, noting that many IORPs invest assets collectively and do not offer individual investment choices. Some MS opposed the deletion of the requirement that investments in assets not admitted to trading on a regulated financial market be kept at prudent levels, citing higher risk and liquidity concerns. Others raised concerns about the mandatory consideration of sustainability factors, highlighting increased administrative burden, methodological inconsistencies, and potential conflicts with the duty to act in the best interests of members and beneficiaries. Some MS suggested determining preferences at scheme level or allowing Member States discretion to apply the provision.

Many MS expressed strong concerns about the removal of Member States' ability to lay down more detailed or quantitative investment rules, including on an individual basis and for DB schemes. Several delegations underlined that quantitative limits act as prudential safety nets and should remain available under national law. Several MS questioned the deletion of

provisions related to cross-border activity and the reduction of Member State leeway in adopting protective national rules.

3. Questions

Q15: Do MS agree with the Commission's proposal to shift from a prudent person rule framework to a risk-based prudent person principle? If not, please elaborate/justify your position.

Q16: Do MS agree with the Commission's proposal to reduce the scope for national quantitative limits? If not, please elaborate/justify your position.

Q17: Do MS agree with the Commission's proposal to embed a sustainability framework into IORPs' investment governance and introduce requirements for sustainability preferences of members and beneficiaries? If not, please elaborate/justify your position and clarify which type of limit should be allowed.

3.Title III – Conditions governing activities – Art. 20-35

Purpose of the discussion

This item aims to present the governance, risk management, and oversight requirements introduced or reinforced under Tittle III. The objective is to enable an exchange of views on the implementation of these provisions, including the management of conflicts of interest and the compliance function, strengthened fit-and-proper requirements for governing bodies and key function holders, internal audit reporting and follow-up arrangements, the establishment of a written own-risk assessment policy, the content of the statement of investment policy principles, outsourcing rules and enhanced safekeeping and oversight duties where members and beneficiaries bear the investment risk.

3.1 System of Governance requirements Article 21 and recital 26

1. Content of the proposal

Building on experience referred to in recital 26, the proposed amendments to article 21 aim to further strengthen the governance framework applicable to IORPs by reinforcing sound and prudent management, enhancing internal control and compliance arrangements, including the

management of conflicts of interest, and improving supervisory oversight, while preserving a proportionate approach that reflects the nature, scale and complexity of their activities.

In its technical advice, EIOPA describes the various forms of conflicts of interest which may arise as part of the activities of an IORP. While the IORP II Directive contains certain provisions on conflicts of interest, these are limited in scope, mainly covering investments, safekeeping of assets, remuneration policy and relations with the sponsoring undertaking. As such, potential conflicts of interest stemming from the relationship between the IORP and its service providers are not addressed comprehensively in the IORP II Directive, which may lead to member and beneficiary detriment.

In response, the Commission proposes to amend article 21 in line with EIOPA's advice by providing that the system of governance must comprise an effective mechanism for managing conflicts of interest.

The revised paragraph 1 clarifies the requirements for an effective system of governance, including an adequate and clear organisational structure, appropriate segregation of responsibilities, effective transmission of information and conflict-of-interest management. Moreover, the system explicitly provides for the consideration of environmental, social and governance (ESG) factors in investment decisions and requires regular internal reviews of the composition and effectiveness of the administrative, management or supervisory body.

Amendments to paragraphs 3 and 4 require IORPs to establish and implement written policies covering key functions, including risk management, internal control, internal audit, remuneration and, where relevant, actuarial and outsourcing activities. These policies must be approved, regularly reviewed and updated.

The internal control system must include appropriate procedures, reporting arrangements and a compliance function. The Commission proposes the inclusion of a compliance function which supports the IORP in ensuring compliance with applicable legal and regulatory requirements and plays a preventive role by identifying, assessing and monitoring compliance risks, including those arising from relationships with service providers. This approach is consistent with Solvency II and other EU financial legislation applicable to financial institutions, where the compliance function is a core element of effective governance. A new paragraph 4a further clarifies the advisory and risk-assessment role of the compliance function.

Additional provisions in paragraph 7 address conflicts of interest, requiring independent decision-making by the persons who effectively run the IORP, in the sole interest of members and beneficiaries. Moreover, paragraphs 8 and 9 introduce requirements on diversity and gender-balance in management or supervisory bodies, including public disclosure of related quantitative targets.

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Finally, the amendments in paragraph 10 strengthen the supervisory powers of competent authorities also ensuring they have the appropriate means and methods to assess governance systems, monitor emerging risks identified by IORPs and require improvements of the system of governance, where necessary.

2. Member States' views

Mixed views were expressed among Member States. Some supported the proposed changes, while others raised concerns about the additional administrative burden, particularly the compliance function, which could be challenging for small IORPs.

Several MS emphasized the minimum harmonization nature of the Directive and the need to respect proportionality.

Some sought clarification on the purpose and scope of the provision, and one questioned the removal of the option allowing IORPs to be managed by a single person.

The strengthened rules on conflicts of interest were broadly supported, although a few Member States requested further clarification.

Opinions were mixed regarding the introduction of diversity and inclusion measures: some highlighted the difficulties of implementation when IORPs do not directly appoint members of management or supervisory bodies, while others stressed the importance of aligning these measures with existing financial services legislation.

3. Questions

Q18: Do MS support the proposed reinforcement of governance, internal control, and conflict-of-interest management proposed in article 21?

Q19: Do MS agree with introducing a dedicated compliance function? If no, please explain/elaborate further.

Q20: Do MS consider the enhanced requirements for managing conflicts of interest to be appropriate? Should other areas, such as service provider relationships, be addressed based on MS's experience?

Q21: Do MS support the proposed diversity and gender-balance requirements, as well as the integration of ESG considerations in investment decisions? If not, which practical challenges in implementing these measures do you foresee and why?

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3.2 Fit and Proper requirements – Article 22 and recital 27

1. Content of the proposal

With the aim of ensuring sound and proper management, article 22 reinforces the 'fit and proper' requirements, to ensure that persons who effectively run an IORP, those performing key functions, and members of administrative, management or supervisory bodies possess the necessary qualifications, knowledge, experience, integrity, and reputation to guarantee the sound and prudent management of IORPs, while enhancing supervisory oversight and reducing potential risks to members and beneficiaries. The amendment aligns the IORP II framework with Solvency II, while remaining adapted to the specificities of occupational pensions. The proposal seeks to better tailor fit and proper requirements to the different governance structures that may exist across IORPs.

In paragraph 1, it is clarified that the qualifications, knowledge and experience of the members of the administrative, management or supervisory body are to be assessed collectively, reflecting the collegiate nature of those bodies. By contrast, when the responsibilities for effectively running the IORP or for carrying out key functions are attributed to individual persons, those persons must fulfil the relevant fit and proper requirements on an individual basis.

To address the shift toward defined contribution schemes, the amendments also require that persons who effectively run the IORP possess the knowledge and competencies necessary to address the different levels of risk to which members and beneficiaries are exposed, depending on the type of pension scheme.

The proposal further strengthens ongoing supervisory oversight. New paragraphs 1a and 1b require IORPs to notify competent authorities of any changes to the persons who no longer meet the fit and proper requirements including the reasons for such changes, and to inform competent authorities where any such person no longer fulfils the requirements. This ensures that supervisors maintain continuous awareness of the individuals responsible for running the IORP and performing key functions.

Paragraph 2 explicitly empowers competent authorities to assess compliance on an ongoing basis, including the identification of actual or potential conflicts of interest and evaluating measures to prevent or manage them, and to require the removal of persons who no longer meet the fit and proper requirements.

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2. Member States' views

While some MS supported the proposed amendments, others pointed out that, also in the interests of proportionality and burden reduction, the requirements should be on a collective basis rather than on an individual basis.

Few MS raised doubts or questions regarding the notification requirements to NCAs since these might conflict with established rules at national level.

On the other side, several MS supported the proposed notification requirements.

3. Questions

Q22: Do MS agree, in principle, with the new provisions in article 22? Are there specific areas where additional guidance or clarification would be helpful?

Q23: Are there additional competencies that MS consider essential for persons who effectively run the IORP or persons who serve on its management or supervisory body or key function holders?

Q24: Do MS support the proposed requirement for IORPs to notify competent authorities of any changes regarding persons who no longer meet fit and proper requirements? If not, please explain why.

Q25: Does the empowerment of competent authorities to assess compliance on an ongoing basis—including identifying conflicts of interest and requiring the removal of non-compliant persons—raise any practical concerns, e.g. because it deviates from current practices? If so, please explain why.

3.3 Remuneration policy – Article 23(3)

1. Content of the proposal

The proposed amendment to article 23 introduces two additional principles for the establishment and application of the remuneration policy of an IORP and more specifically on the interaction between remuneration policies and practices and the integration of sustainability risks, as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council, as reflected in the IORP's risk management system, as well as on the requirement that remuneration policies and practices be objective and non-

discriminatory, including compliance with the principle of equal pay for women and men for equal work or work of equal value.

2. Member States' views

Several MS questioned the changes to the remuneration policy citing in particular additional administrative burden concerns. Regarding the sustainability risks, some MS pointed out that these should be addressed through sound risk management, not through remuneration policies and asked to ensure coherence and consistency with the SFDR review.

3.4 Risk management – Article 25(2)

1. Content of the proposal

The proposed provision removes the reference to "size and internal organisation," thereby streamlining the focus on the "nature, scale and complexity" of IORPs' activities.

2. Member States' views

MS were supportive of the changes. One member state requested clarification regarding investment-related risks, to ensure their application to all asset types, including unlisted assets and other comparable alternative investments.

3.5 Internal audit system – Article 26

1. Content of the proposal

The amendment to article 26 provides that the findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body, which shall determine the appropriate actions to be taken in respect of each finding and recommendation and shall ensure their effective implementation.

2. Member States' views

Views expressed by Ms supported the changes.

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3.6 Own risk assessment – Article 28

1. Content of the proposal

Article 28 aims to ensure that IORPs establish a written policy for own-risk assessments containing the processes and procedures for carrying out the assessment, the frequency of the assessment and the methods. In addition, the amendments expand the content of the own-risk assessment by requiring IORPs to assess their risks against the risk tolerance limits approved by their administrative, management or supervisory body, including, where applicable, from the perspective of members and beneficiaries.

The amendments further require the inclusion of an assessment of the elements referred to in Article 44b (2), as well as an assessment of economies of scale and efficiency options, such as participation in pooled investment structures, shared services or transfers, and their impact on members and beneficiaries.

It is PCY's understanding that the proposed amendment implements a recommendation made by EIOPA in its technical advice and is intended to strengthen the risk management framework and foster members and beneficiaries' protection.

2. Member States' views

Some MS supported the provisions, while others highlighted that consistency needs to be ensured with the Solvency II framework and questioned the necessity of the provisions, citing proportionality, simplification and burden reduction. Additionally, some expressed concerns about the assessment of economies of scale, as it seems to be irrelevant with regard to the own-risk assessment obligation.

3. Questions Articles 23, 25(2), 26 and 28

Q26: Do Ms agree with the proposed amendments in Articles 23, 25(2), 26 and 28. If not, please elaborate/justify your position.

3.7 Statement of Investment Policy Principles – Article 30

1. Content of the proposal

Under the existing framework, each pension scheme is required to have a statement of investment policy principles (SIPP). The Commission proposes to amend Article 30 by expanding and further specifying the mandatory content of the SIPP. The revised provision sets out more detailed requirements on the elements to be covered by the SIPP, including the investment strategy, risk management considerations and long-term objectives of the pension scheme. The proposal also reinforces the role of the SIPP as a public document, thereby increasing its visibility to members, beneficiaries and other stakeholders. The proposal aims to strengthen governance, transparency and comparability of IORPs' investment policies across the Union. It complements the clarification of the prudent person principle by strengthening the governance and accountability framework underpinning investment decision-making. While Article 19 defines how investments must be assessed – through a risk-based, portfolio-oriented prudent person principle – Article 30 ensures that IORPs demonstrate, in advance and in a structured manner, how they intend to apply that principle in practice.

First, the SIPP shall clearly set out investment objectives consistent with each scheme's retirement income goals, define overall performance objectives and establish tolerances for deviations from the asset allocation and performance targets. It is the PCY's understanding that this is meant to directly support the portfolio-based logic of the prudent person principle by ensuring that risk and return are assessed against pre-defined long-term objectives rather than through regulatory asset-class limits. The investment policy shall also include any overarching strategic decisions regarding tactical asset allocation, security selection and trade execution. By requiring such ex-ante reflection on key elements of the investment process, the amendment reinforces that investment freedom under the prudent person principle must be accompanied by structured decision-making and ongoing performance monitoring.

Second, the statement shall also address whether, why, to what extent and how more complex classes of assets, including alternative asset classes, will be considered. The SIPP thereby supports the demonstration that the use of such assets results from an informed risk assessment and is consistent with the scheme's liabilities and risk capacity. Similarly, the requirement to specify the appropriate extent of exposure to counterparty risk reflects the principle that risks must be identifiable, measurable and manageable at portfolio level.

Third, the amendment also introduces explicit governance requirements by requiring IORPs to establish procedures and criteria for reviewing the effectiveness of the investment policy and

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to determine whether amendments are required to the policy, its implementation procedures or the decision-making structure.

Finally, Member States shall also ensure that, for pension schemes in which members are entitled to make investment choices, the statement provides for an appropriate range of investment options, including a default option, classifies those options according to the nature and extent of the investment risk borne by members, and ensures that sufficient information is made available to enable informed investment decisions.

The enhanced specification of the SIPP is aligned with international standards on pension fund governance and investment policy, including the OECD Core Principles of Private Pension Regulation and its Implementing Guidelines, as recalled in recital 29.

By standardising key elements of the SIPP, the proposal seeks to ensure that investment decisions are clearly documented, aligned with long-term pension objectives and subject to effective supervisory scrutiny. It is the PCY's understanding that the Commission aims to improve information available to members and beneficiaries, while promoting greater consistency with other disclosure-oriented provisions of the Directive.

2. Member States' views

Mixed views were expressed. Some MS supported the provisions. Others stressed that the proposed amendment creates a duplicative regime, as investment rules are to a large extent already contained in the statutes of supplementary pension funds. Others, in light of the public nature of the statement, questioned some of the requirements. One MS requested clarifications on whether the requirements would apply to DB schemes. Few Ms pointed out that information requirements are and should be captured by the disclosure framework of Title IV. One MS stressed that the requirements should remain at the discretion of the Member State.

3. Questions:

Q27: Do Member States agree with the proposed expansion and standardisation of the SIPP? If not please elaborate/justify your position.

3.8 Outsourcing – Article 31

1. Content of the proposal

Article 31 of the IORP II Directive lays down rules and documentation requirements governing the outsourcing by IORPs of any activities, including key functions and the management of those IORPs, in whole or in part, to service providers. As explained in recital 30 of the proposal, outsourcing is often necessary to achieve an efficient pooling of assets. Such pooling can deliver economies of scale, improve investment performance and reduce costs for members and beneficiaries. To foster the pooling of assets and avoid fragmentation of the requirements around outsourcing the proposal introduces a more harmonised and risk-based approach to outsourcing, aiming to ensure that outsourcing is generally permitted subject to robust governance and supervisory safeguards.

The proposal provides that Member States shall (instead of "*may*") permit or require IORPs authorised in their territories to outsource activities, including key functions and the IORP's management, in whole or in part, to service providers. In other words, Member States' will not be able to prohibit anymore any outsourcing activities.

The possibility to outsource remains, however, strictly conditional to compliance of the outsourcing arrangements with the specific conditions set out in the same article, which ensure that outsourcing does not impair governance, increase operational risk, weaken supervisory oversight or undermine service to members and beneficiaries.

These safeguards largely remain unchanged, except for paragraph 5. Paragraph 5 is revised to require that the legally enforceable written agreement that the IORP must enter into with the service provider should include a breakdown of direct and indirect costs, thereby strengthening cost transparency and enabling better oversight of outsourcing arrangements. In addition, where potential conflicts of interest with the service provider may arise, IORPs are explicitly required to document and implement procedures to prevent or manage such conflicts, reinforcing existing governance requirements.

The PCY understands that with the proposal the Commission seeks to promote operational efficiency, flexibility and the use of specialised expertise by IORPs, particularly in smaller markets or cross-border contexts. By removing the possibility of full outsourcing prohibitions, the proposal aims to prevent fragmentation of organisational models across the Union.

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The proposal also deletes paragraph 7 concerning the power of NCAs to request information directly from IORPs and from service providers concerning outsourced key functions or other outsourced activities and relocates it in new Article 50a. It is the PCY's understanding that this does not weaken supervisory powers. For reasons of structure and clarity, the supervisory aspects of outsourcing are therefore addressed separately and will be discussed in the section dedicated to Article 50a.

2. Member States' views

Some MS supported removing the possibility for MS to fully restrict outsourcing arrangements. Others expressed reservations. Few MS opposed that the NCA shall require the IORP to outsource some of its activities. Regarding the deletion of the NCAs' power to request information from IORPs and from service providers about outsourced key functions or any other activities, MS expressed concerns and asked for clarifications about the rationale behind the deletion and asked whether this is linked to new provisions in Title V.

3. Questions

Q:28 Do MS agree with the changes in Article 31, in particular the removal of MS' possibility to fully restrict outsourcing arrangements? If not please elaborate/justify your position.

3.9 Appointment of a depositary, Safekeeping of Assets and Depositary Liability and Oversight Duties – Articles 33, 34 and 35

1. Content of the proposal

The amendments to Articles 33, 34, and 35 aim to reinforce the safekeeping of assets and oversight duties, in particular for pension schemes where members and beneficiaries fully bear the investment risk. These Articles are based on the premise that depositaries play a key role in safeguarding pension assets and overseeing the management of occupational pension schemes, especially defined contribution schemes where members and beneficiaries fully bear the investment risk. Under the present rules, Member States enjoy discretion on whether to require the appointment of a depositary or allow IORPs to perform the depositary functions themselves.

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The proposal moves towards a more harmonised approach at Union level by removing national discretions on whether to require the appointment of a depositary or allow IORPs to perform the depositary functions themselves.

For pension schemes where members and beneficiaries fully bear the investment risk, and where the protection gap is therefore most acute, the competent authority of the home Member State shall require the IORP to appoint one depositary per pension scheme for the safekeeping of assets and oversight duties, in accordance with Articles 34 and 35.

It is the PCY's understanding that the requirement to appoint a single depositary per pension scheme is intended to ensure that the depositary has a comprehensive overview of all the assets of the scheme and of the related cash flows. It also provides the IORP, its members and beneficiaries, and the competent authorities with a single point of reference in relation to the safekeeping of assets and the performance of oversight duties. This approach enhances legal clarity, accountability and effective supervision, where assets are held in custody or, where this is not possible, are subject to ownership verification and record-keeping obligations. This is aligned with the UCITS framework, which is likewise based on the appointment of one depositary with overall responsibility for asset safekeeping and oversight.

Unless otherwise provided for in Chapter 3, the appointment of the depositary is governed by Chapter IV of the UCITS Directive, which applies accordingly, ensuring a single, coherent and dynamically evolving framework covering eligibility, safekeeping, oversight and liability.

The proposal removes the existing power of the host Member State to require the appointment of a depositary for cross-border activities, thereby confirming that the appointment of a depositary is a prudential matter falling within the competence of the home Member State and avoiding discriminatory treatment of cross-border IORPs and unnecessary obstacles to cross-border provision.

The proposal allows, under specific conditions, IORPs that keep assets themselves not to appoint a depositary where alternative arrangements provide a level of protection equivalent to that ensured by a depositary, provided that a trustee performs the oversight duties in accordance with Article 35 and the minimum asset-safekeeping requirements set out in Article 34 are met.

For schemes in which members and beneficiaries do not fully bear the investment risk, the proposal provides that Member States may require IORPs to appoint one depositary per scheme for safekeeping or for safekeeping and oversight duties, again by reference to Chapter

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IV of the UCITS Directive, which applies accordingly. Where no depositary is required or appointed for such schemes, Article 33(8) continues to apply, requiring IORPs to put in place arrangements to prevent and resolve conflicts of interest in the performance of tasks otherwise carried out by a depositary or an asset manager.

It should also be recalled that, at the time of the adoption of the proposal that led to IORP II in March 2014, the depositary regime for IORPs was broadly aligned with the UCITS framework then in force. The UCITS depositary regime was subsequently substantially strengthened, notably through UCITS V. The IORP depositary framework was not updated accordingly, resulting in a divergence between the two regimes.

The PCY understands that the proposal is part of a broader effort to ensure market efficiency and protect investors in regulated investment funds as well as in the alternative asset sector. It is understood that the Commission views the introduction of an independent depositary as an appropriate safeguard to accompany the expected diversification of IORP's asset allocation strategies, and to strengthen trust in supplementary pension arrangements.

Article 34 of the IORP II Directive currently lays down detailed rules on asset safekeeping by depositaries and, where no depositary is appointed, by IORPs themselves. The proposal replaces the depositary-specific safekeeping and liability provisions with a general rule providing that, unless otherwise specified, Chapter IV of the UCITS Directive applies accordingly to the safekeeping of assets and to depositary liability.

The proposal retains the existing minimum asset-safekeeping requirements applicable where no depositary is appointed, ensuring continuity for IORPs that keep assets themselves.

The revised provision reinforces the link between Articles 33 and 34, while reducing scope for divergent national interpretations of depositary liability and safekeeping obligations.

The Commission's objective is to enhance the protection of pension assets and the interests of members and beneficiaries through a clearly defined and consistently applied depositary framework. The aim is to ensure a high and consistent level of asset protection across the Union by clearly defining depositary responsibilities and liability. The proposal seeks to reduce supervisory gaps and improve legal certainty, while ensuring that members and beneficiaries of IORPs should benefit from a level of protection equivalent to that applicable to investors covered by UCITS.

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In relation to the oversight duties of the depositary, paragraph 1 in article 35, is replaced, in line with changes in articles 33 and 34, in order to streamline references to Chapter IV of the UCITS Directive.

The PCY recognises that the proposed changes are broadly aligned with EIOPA's technical input to the review of the IORP II Directive, which emphasises the central role of depositaries in defined contribution schemes, the need for consistent prudential safeguards across Member States, and alignment with the UCITS depositary framework to strengthen protection for members and beneficiaries and foster trust in supplementary pensions.

2. Member States' views

Some MS agreed with the proposed changes. Some others questioned the purpose to assign a depository per pension scheme, in particular when there is collective investment and risk-sharing. They stressed that this would bring additional burden and extra costs without providing the benefits of additional protection. Several MS also requested clarifications regarding the respective roles of a trustee and of a depositary. Many MS stressed the need for more flexibility, for example, by proposing the introduction of a possibility and not an obligation to appoint a depositary, not to impose unnecessary burdens and also to cater for different cases and national situations. Many MS also requested clarifications regarding the procedure for appointing a depositary. On Article 34, many MS agreed with the revised Article, while others stressed the link with Article 33 and the comments made thereon.
MS expressed no views on the proposed amendment to Article 35.

3. Questions

Q29: Do MS agree with the changes to Article 33 and the appointment of a depositary at pension scheme level? If not, please elaborate/justify your position.

Q30: Do MS consider that the revised Article 34 provides an appropriate and proportionate liability regime for depositaries? If not, please elaborate/justify your position.

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4. Title IV– Chapter 4 Business conduct rules – Art 44a-44d

Overview

The Commission proposal introduces a new Chapter 4 in Title IV aimed at strengthening member protection, governance and conduct of business principles, and access to complaints and redress mechanisms, also in cross-border situations.

The new Chapter introduces:

- a general duty of care (Article 44a);
- requirements on the structure and implementation of pension schemes (Article 44b);
- a complaints-handling framework (Article 44c);
- provisions on out-of-court redress (Article 44d).

These provisions aim to complement prudential supervision with minimum-harmonised conduct standards across Member States. According to the explanatory memorandum, these measures aim to strengthen trust in occupational pensions, improve member protection, and ensure consistent safeguards across Member States, while facilitating cross-border activity of IORPs. The PCY understands that the introduction of Chapter 4 broadly reflects EIOPA's technical advice on the review of the IORP II Directive, in particular its recommendations on duty of care, appropriate scheme design, long-term risk assessment for defined contribution schemes, and effective complaints-handling and redress mechanisms.

4.1 Duty of care - Article 44a

1. Content of the proposal

In order to enhance the protection of members and beneficiaries, especially given the greater risk many bear as a result of the shift from DB to DC schemes, and to support them in making informed decisions when faced with complex choices –such as choosing among investment or payout options – the Commission proposes to introduce a new horizontal duty of care principle requiring IORPs to act honestly, fairly and professionally in the best interests of members and beneficiaries. A key interest of members and beneficiaries concerns the responsible and diligent risk management and investment management of the IORP, in line with their expectations and long-term best interests. To this end, the proposal specifies that, in fulfilling their duty of care, IORPs are required to seek adequate risk-adjusted and cost-efficient returns over the long run.

Furthermore, the duty of care principle also encompasses the provision of support to members and beneficiaries faced with complex choices or information which may be difficult for them to appropriately process and assess, often due to insufficient understanding, information gaps, or behavioural biases. To that end, the proposal requires IORPs to provide guidance and other safeguards (i.e., alerts, warnings, targeted communications) to support them in understanding the nature and implications of available choices and to drive informed and suitable decision-making.

The provision complements existing governance, disclosure and risk-management provisions. The measure seeks to reinforce member-centric governance, improve quality of information and guidance, and ensure consistent minimum protection standards across MS. The proposal is designed as a minimum harmonisation safeguard, rather than a full harmonisation of conduct rules. Recital 36 clarifies that the duty of care is without prejudice to national social and labour law traditions. It is the PCY's understanding that the Commission intends to introduce a common baseline standard of conduct for IORPs across the Union, comparable to principles found in other areas of financial services legislation (like MiFID and IDD), while respecting the specific nature of occupational pensions. The proposal reflects that consumer-protection safeguards should accompany increased flexibility in investment and pension-design rules.

2. Member States' views

The majority of MS supported the introduction of a duty of care principle. Some stressed that the principles enshrined in the Article should clearly remain of minimum harmonisation, not to harm enhanced protection provided at national level. Few MS requested changes and clarifications regarding the detailed elements that qualify the concept of best interest and also regarding the safeguards and guidance IORPs shall provide. One MS pointed out the role social partners have in deciding the information to be provided.

3. Questions

Q31: Do MS agree with introducing a duty-of-care principle at Union level for IORPs? If not, please elaborate/justify your position.

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4.2 Appropriate structure and implementation of pension schemes - Article 44b

1. Content of the proposal

Article 44b wants to ensure that IORPs maintain an appropriate organisational structure for operating pension schemes, and implement schemes in a way consistent with their design, membership profile and risk allocation. The provision connects governance arrangements with scheme design and operational delivery. Recital 37 explains that the provision aims to ensure that pension schemes are properly organised and implemented in practice.

Specifically, IORPs would be expected to identify the needs, characteristics and risk profiles of their members and beneficiaries, and take them into account in the design and implementation of the scheme, including in particular the choice and suitability of default options, investment options and payout options. A regular review of the appropriateness of the design, structure and implementation of the scheme will have to be carried out and documented by the IORP, and adaptations should be made if necessary.

In light of the ongoing shift from DB to DC schemes and the transferring of risk to members, paragraph 2 introduces specific long-term risk-assessment requirements for IORPs whose members bear investment risk, aiming to enhance their protection against the various risks they face, such as future pension income risk. Building on EIOPA's advice, the Commission proposal requires IORPs to carry out long-term risk assessments from the perspective of members and beneficiaries to help alleviate these risks, particularly through knowing their members' risk tolerance, capacity to bear losses and risk-return preferences, and thereby ensuring that the investment strategy, the investment options or the default investment option (where offered) are suitable for them. These long-term risk assessments should make use of projections of future retirement income, from the perspective of members and beneficiaries. IORPs are also expected to conduct a periodic review of the suitability of the investment options and the default option or, if these are not offered, a periodical review of the investment strategy.

It is the PCY's understanding that the Commission aims to ensure that pension schemes are not only prudently managed financially but also appropriately structured and implemented from an operational and member-protection perspective. The Commission also seeks to support cross-border consistency in scheme organisation.

2. Member States' views

MS expressed mixed views. Some MS supported the provisions, while others were critical citing in particular simplification and administrative burden concerns. Several MS requested

clarifications and asked that the provision should also take into account the role of social partners and more generally the role of social and labour law. Few MS stressed that more consideration should have been given to the functioning of DC schemes. Several MS stressed the link with other provisions (i.e. Art 28 and 41a) and highlighted the importance to streamline and avoid duplication.

3. Questions

Q32: Do MS agree with the provisions in Article 44b? If not, please elaborate/justify your position.

4.3 Complaints - Article 44c

1. Content of the proposal

The Commission introduces a requirement for IORPs to establish procedures for handling complaints from members and beneficiaries, including in cross-border situations. The Article sets out minimum procedural expectations, including communication with complainants and handling timelines.

Article 44c specifies that complaints must be answered within a maximum of 40 working days, and IORPs must inform the complainant about at least one competent alternative dispute resolution (ADR) body.

Moreover, in line with other pieces of EU financial legislation, competent authorities are required to set up procedures to allow members and beneficiaries to lodge complaints to them concerning possible infringements of the Directive, including in cross-border situations, and provide replies to such complaints. This is also an additional mechanism to guarantee the existing obligation under the current Article 48(2) for Member States to take all measures necessary to ensure that administrative sanctions and other measures applicable to all infringements of the national provisions implementing the Directive are implemented, and that administrative sanctions and other measures are effective, proportionate and dissuasive.

Recital 38 highlights the importance of accessible and effective complaint mechanisms as part of member protection. It is the PCY's understanding that the Commission aims to ensure that all members and beneficiaries have access to consistent minimum complaint-handling standards that are accessible, affordable, independent, fair, accountable, timely, and efficient, regardless of the Member State in which the IORP operates. The provision ensures minimum procedural safeguards across the Union and supports cross-border pension provision, where complaint channels may otherwise be unclear. This aligns occupational pensions with

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complaint-handling expectations found in other financial services legislation. Together with the requirements under Article 44d, these provisions broadly mirror existing frameworks under the PEPP Regulation (Articles 50 and 51) and the Insurance Distribution Directive (Articles 14 and 15).

2. Member States' views

Some MS supported the provision stressing how it helps strengthening consumer protection also in cross-border cases. Others highlighted that the system should be put in place only when there is no other already existing mechanism. Some MS requested adjustment regarding the communication medium and questioned the time limit. Several MS criticised the provision regarding the alternative dispute resolution body and asked for clarification about the responsible competent authorities and what is meant by complaints.

3. Questions

Q33: Do MS agree with the introduction of the proposed complaints-handling requirements at Union level? If not, please elaborate/justify your position.

4.4 Out-of-court redress - Article 44d

1. Content of the proposal

Article 44d introduces provisions requiring Member States to ensure the availability of out-of-court redress mechanisms, including ADR procedures for the settlement of disputes between IORPs and their members and beneficiaries. The Article complements the complaints-handling framework in Article 44c and aims to ensure access to dispute resolution mechanisms where complaints cannot be resolved at IORP level. ADR bodies must be competent to deal with IORPs and must cooperate effectively in cross-border cases, ensuring consistent protection of members and beneficiaries across the internal market. The PCY understands that with this provision the Commission seeks to ensure that members and beneficiaries have access to effective dispute-resolution mechanisms, particularly in cross-border situations where national procedures may differ.

2. Member States' views

In light of the comments expressed on Art 44c, many MS questioned the provision and would like it to be more framed. In particular they pointed out that redress should only take place if there is no other available existing mechanism.

3. Questions

Q34: Do MS agree with the introduction of out-of-court redress mechanisms as provided for in Article 44d? If not, please elaborate/justify your position.

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