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Presidency discussion paper on amendments to IORP Directive

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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.

Building on the discussions held during the previous five CWPs, the meeting on 22nd of May provides an opportunity to provide compromise options and drafting suggestions on all remaining key issues of the IORP proposal. The discussion will therefore revisit main elements of the proposal with a view to confirm areas of convergence, identify any residual concerns and support the development of clear and operational framework. In other areas, where text was already provided in the last CWP and MS broadly agreed on the proposed way forward, the PCY has refined the previous proposed compromise proposals on the basis of the written comments by MS. An Annex with the first draft compromise version of the whole text accompanies this PCY paper. The PCY would like to clarify that the drafting suggestions focus on the Articles and not all Recitals have been adjusted. The idea is to focus on the enacting terms and deal with the rest of the Recitals once the way forward on the provisions and Articles is agreed.

For ease of reference, the drafting suggestions in this PCY paper are based on the Commission's review proposal. PCY additions are indicated in *italics* and red, while deletions are shown using ~~strikethrough~~. The same methodology is applied to the attached first draft compromise text provided in the Annex.

1. Scope and application of Directive, definitions and activities

1.1 Article 2

The Presidency considers useful to provide first a summary of previous clarifications regarding authorized entities, and point out the following:

Authorised entities are:

(a) Entities which are authorised under EU prudential legislation/framework referred to in paragraph 2, point (b) below, such as insurers (authorized under Solvency II), etc., or

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(b) Entities which are not authorized under EU prudential legislation/framework, but they are authorized under national law to carry out those activities, i.e. operate an IORP and act on its behalf, such as pension management companies.

The IORPs, which are constituted in such form, based on national law, and the Authorized Entities which take the responsibility for operating them and acting on their behalf, shall apply the respective requirements/provisions in accordance with the allocation of responsibilities between them.

In the case of the authorised entities referred to in point (a) above, Member States shall not restrict such authorised entities, which are authorised in another Member State from carrying out those activities, except any activities relating to the provision of Personal Pensions, which are authorized under national law, and are not PEPPs.

As far as the issues that were set by the Presidency for discussion and for which respective options and questions for written comments were provided at the previous CWP, great support was expressed by MS, regarding:

(a) Keeping paragraph 1 as is,
(b) The clarifications provided that there is no issue for in-compatibility between the IORP Directive and National Laws,
(c) Keeping paragraph 3 as is, but include relevant clarification in recitals, and
(d) Inclusion of clarification in recitals regarding the term "legal separation".

For points (c) and (d) above, the following text is proposed by the Presidency to be included in recital 12:

Recital 12:

In Member States where, in accordance with national law, IORPs are operated by authorised entities acting on their behalf, authorised entities established in another Member State should be able to carry out the activities of operating an IORP and acting on its behalf under the conditions laid down by the Member State in which the IORP is authorised. Those conditions should ensure equal treatment between domestic and cross-border authorised entities. This should apply only to entities harmonised at Union level, provided that such entities are permitted, under the laws of the Member State where the IORP is authorised, to operate an IORP and act on its behalf.

Member States should also ensure that the assets of IORPs are legally separate from those of the authorised entities operating them, in a manner that precludes any transfer of assets between them, so as to ensure that those assets remain exclusively available to meet the obligations of the IORPs.

For point (a) above, the amendments proposed by the Presidency, after taking in consideration various re-drafting suggestions from MS, are included in the consolidated text with all articles and amendments.

(2) Article 2 is amended as follows:

(a) in paragraph 1, the second sentence is replaced by the following:

'Where, in accordance with national law, IORPs are constituted in a form under which authorised entities are responsible for operating them and acting on their behalf, Member States shall apply this Directive either to those IORPs or, subject to paragraph 2, to such authorised entities, or to both, as appropriate.';

(b) the following paragraph 3 is added:

'3. Where, pursuant to paragraph 1, authorised entities are responsible for operating IORPs and acting on their behalf, Member States shall ensure that the assets of the IORPs are legally separate from those of the authorised entities.

~~For the purposes of the first subparagraph, where the authorised entities referred to in paragraph 2, point (b), operate IORPs and act on their behalf, Member States shall not restrict such authorised entities established in another Member State from carrying out those activities.~~';

(c) the following paragraph 4 is added:

'In the case of entities which are authorised based on Union prudential legislation, Member States shall ensure that these entities apply the relevant IORP provisions, to the extent that they do not duplicate respective requirements under their sectoral Union prudential legislation.

Member States shall not restrict entities authorised based on Union prudential legislation and authorised in another Member State from carrying out those activities, with the exception of activities relating to the provision of personal pension products which are authorised under national law, other than pan-European Personal Pension Product, as defined in Article 2(2) of Regulation (EU) 2019/1238.

By way of derogation from paragraph 2, where entities authorised under EU prudential legislation intend to operate such IORPs on a cross-border basis, Articles 11 and 11a of shall apply.

Q1: Do MS agree with the proposed text for recital 12 and for the amendments in Article 2?

1.2 Articles 3 and 4

Article 3:

The application of IORP Directive to other retirement business of IORPs which operate Social Security Schemes covered by Regulations (EC) 883/2004 and 987/2009, was an issue for which much discussion took place, and different views and concerns have been expressed during previous discussions and written comments.

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This subject is of great importance for a small number of MS whose existing Social Security Systems, involve IORPs that are operating the country's Social Security Scheme, and as part of the Social Security System, they also operate supplementary 1bis Personal Pension business, but in some cases they operate other PPP business as well. The proposed changes in Article 3, are affecting these systems, and for this reason these MS requested the exclusion from the Directive of 1bis PP business, along with any other PPP business operated by IORPs operating Social Security Schemes. A number of additional MS, which have National Laws that allow PPPs business other than 1bis PP business, showed support for this.

Based on the written comments received, support was expressed by MS towards the exclusion of social security 1bis PP schemes from the application of the Dir, while based on the answers received for a relevant question for par. 5 of Article 6, the majority of MS have chosen the option relating to keeping PPPs business (which includes also 1bis PP schemes) in the proposal.

As far as the other issue that was put forth for discussion and for which written comments were requested, this was related to the proposal of above-mentioned MS to bring back in paragraph 1, of the word 'occupational", so that any non-occupational business will be excluded from Article 3. MS views received were mixed on this.

The Presidency proposes the following two options:

Option 1 – Confine a grandfathering to IORPs operating social security schemes that also offer personal pension products.

In order to allow for the exclusion of personal pension products from the application of the Directive where an IORP also operates social security schemes, revise Article 3 in order to allow for the application of grandfathering for existing Social Security Systems, where IORPs are operating Social Security Schemes, and as part of them they operate supplementary 1bis PP schemes, while, in some cases, they also the operate other PPP business. Relevant conditions should be met, relating to the OECD Core Principles of Private Pension Regulation and their Implementing Guidelines. These conditions are presented in the revised for this purpose Article 3 (Grandfathering) of the proposal.

It is also important to underline that PEPP products are PPP which are subject to harmonised rules and benefit from passporting. In order to protect PEPP savers across borders and ensure a level playing field, where IORPs distribute PEPPs, they should be subject to the IORP II Directive in relation to their whole business.

Option 1:

Recital

A relevant recital relating to this option should be included in the recitals stating the following:

"Some Member States have, before the date of application of the amendments introduced by this Directive, allowed IORPs referred to in Article 3 of Directive (EU) 2016/2341 to carry out personal retirement provision business without being subject to the respective provisions of the Directive. In order to take account of such pre-existing national social security arrangements, a derogation is provided, and those arrangements should be allowed to be maintained, provided that such personal retirement provision business is subject to an effective national prudential framework ensuring a level of protection for savers equivalent to that provided for under Directive (EU) 2016/2341. Such national prudential frameworks should, in any event, be in line with the OECD Core Principles of Private Pension Regulation and their Implementing Guidelines.

Drafting text for Article 3 of the Directive and Article 3 of COM's proposal

Option 1: 'Article 3

Application to IORPs operating social security schemes

1. IORPs which also operate pension schemes that are considered to be social security schemes covered by Regulations (EC) No 883/2004 and (EC) No 987/2009 shall be covered by this Directive in respect of their retirement provision business ***other than those schemes*** ~~***not covered by those Regulations***~~**.** In that case, the liabilities and corresponding assets shall be ring-fenced, and it shall not be possible to transfer those liabilities and corresponding assets to the pension schemes which are considered to be social security schemes, or vice versa.

Option 1: Article 3 of the COM Proposal

Grandfathering as regards the operation of personal pension products where the IORP is also operating social security schemes

Grandfathering

1. IORPs which were registered or authorised under Directive (EU) 2016/2341 before [PO = please insert 1 day before application date of this Directive] are automatically recognised as IORPs authorised under national provisions transposing this Directive.

2. By way of derogation from Article 3 of Directive (EU) 2016/2341, where, on [the day before the date of application of the amendments introduced by this Directive], a Member State allows the IORPs referred to in Article 3 to carry out personal retirement provision business without being subject to the provisions of Directive (EU) 2016/2341, it may continue to do so, provided that all of the following conditions are met:

(a) The IORPs are subject, in relation to their personal retirement provision business, to an effective national prudential framework ensuring a level of protection for savers equivalent

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to that provided for under this Directive, including requirements concerning effective supervision by competent authorities, sound governance, fit and proper management, internal control, risk management, and actuarial, accounting and audit standards;

(b) the IORPs are required to invest the assets relating to the personal retirement provision business in accordance with the prudent person principle and in the best long-term interests of savers, taking into account security, quality, liquidity and, profitability of the portfolio as a whole, the need for proper diversification, the nature and duration of liabilities, and the risks borne by savers;

(c) the IORPs are subject to prudential requirements, including, where relevant, funding, technical provisions, capital or other financial security requirements, commensurate with the nature, scale and complexity of the risks borne in relation to the personal retirement provision business; and

(d) the liabilities, corresponding assets and financial resources related to the personal retirement provision business are strictly ring-fenced from those related to the occupational retirement provision business, with no possibility of transfer between them and no recourse to the assets or own funds allocated to one business to cover losses arising from the other.

Member States shall notify the Commission and EIOPA of any arrangements maintained pursuant to this paragraph by [the day before the date of application of the amendments introduced by this Directive.

This paragraph shall not apply to the provision of a pan-European Personal Pension Product within the meaning of Regulation (EU) 2019/1238.

Option 2 - Extend the grandfathering to all IORPs which operate personal pension products, irrespective of whether they also operate social security schemes:

Option 2:

Recital

Some Member States have, before the date of application of the amendments introduced by this Directive, allowed IORPs to carry out personal retirement provision business without being subject to the respective provisions of the Directive. In order to take account of such pre-existing arrangements, a derogation is provided, and those arrangements should be allowed to be maintained, provided that such personal retirement provision business is subject to an effective national prudential framework ensuring a level of protection for savers equivalent to that provided for under Directive (EU) 2016/2341. Such national prudential frameworks should, in

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any event, be in line with the OECD Core Principles of Private Pension Regulation and their Implementing Guidelines.

Drafting texts for Article 3 of Dir and Article 3 of proposal

Option 2: Article 3 of Dir

Same as in Option1

Option 2 - *Grandfathering as regards the operation of personal pension products for all IORPs*

Article 3

Grandfathering

1. IORPs which were registered or authorised under Directive (EU) 2016/2341 before [PO = please insert 1 day before application date of this Directive] are automatically recognised as IORPs authorised under national provisions transposing this Directive.

2. Where, on [the day before the date of application of the amendments introduced by this Directive], a Member State allows the IORPs to carry out personal retirement provision business without being subject to the provisions of Directive (EU) 2016/2341, it may continue to do so, provided that all of the following conditions are met:

(a) The IORPs are subject, in relation to their personal retirement provision business, to an effective national prudential framework ensuring a level of protection for savers equivalent to that provided for under this Directive, including requirements concerning effective supervision by competent authorities, sound governance, fit and proper management, internal control, risk management, and actuarial, accounting and audit standards;

(b) the IORPs are required to invest the assets relating to the personal retirement provision business in accordance with the prudent person principle and in the best long-term interests of savers, taking into account security, quality, liquidity and, profitability of the portfolio as a whole, the need for proper diversification, the nature and duration of liabilities, and the risks borne by savers;

(c) the IORPs are subject to prudential requirements, including, where relevant, funding, technical provisions, capital or other financial security requirements, commensurate with the nature, scale and complexity of the risks borne in relation to the personal retirement provision business; and

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(d) the liabilities, corresponding assets and financial resources related to the personal retirement provision business are strictly ring-fenced from those related to the occupational retirement provision business, with no possibility of transfer between them and no recourse to the assets or own funds allocated to one business to cover losses arising from the other.

Member States shall notify the Commission and EIOPA of any arrangements maintained pursuant to this paragraph by [the day before the date of application of the amendments introduced by this Directive.

This paragraph shall not apply to the provision of a pan-European Personal Pension Product within the meaning of Regulation (EU) 2019/1238.

Q2: Which of the above 2 Options for article do MS support?

Article 4:

The same issue that was discussed in relation to Article 3, i.e. the inclusion or not in the scope of the Directive of IORP's activities relating to operating Social Security 1bis PP business, was discussed in relation to the provisions of Article 4. As already mentioned above, based on the written comments received, support was expressed by MS towards the exclusion of social security 1bis PP business from the application of the Directive.

The other issue that was discussed was the misinterpretation of the provision which stated that "In the case of institutions referred to in Article 2(2), point (a), Member States may decide on the application of provisions of this Directive only insofar as that application is compatible with Regulations (EC) No 883/2004 and (EC) No 987/2009". The Presidency provided a proposal for replacing this wording with a better wording that refines the language of the proposed amendment, and allows correct interpretation, and based on the written comments received, support for this option was expressed by MS.

Article 4 would be drafted as follows:

Article 4

Optional application

Member States may *decide to* apply *in whole or in part* ~~***some or all***~~ the provisions of this Directive to institutions, irrespective of their legal form, operating on a funded basis for the purpose of providing retirement benefits:

(d) that are excluded from the scope of this Directive pursuant to Article 2(2), points (a) and (d); or

(e) that are not covered by this Directive or by Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU and 2014/65/EU.

In the case of institutions referred to in Article 2(2), point (a), the application of this Directive in whole or in part shall be without prejudice to the obligations arising from Regulations (EC) No 883/2004 and (EC) No 987/2009.

~~In the case of institutions referred to in Article 2(2), point (a), Member States may decide on the application of provisions of this Directive only insofar as that application is compatible with Regulations (EC) No 883/2004 and (EC) No 987/2009.~~

Where, in accordance with national law, the institutions referred to in the first paragraph are operated by authorised entities responsible for acting on their behalf, Member States may decide to apply this Directive either to those institutions or to the authorised entities responsible for operating them and acting on their behalf, or to both, as appropriate.

Member States may decide to apply Articles 11 and 11a under this Article only if all the provisions of this Directive apply.

Member States shall notify the Commission and EIOPA where they make use of the options referred to in in the first and second paragraphs, indicating the types of institutions or, where applicable, authorised entities covered by the use of those options and the provisions of this Directive that apply to them.

The Commission shall make that information publicly available.';]

Q3: Do MS agree with the PCY's proposal for Article 4?

1.3 Article 5

The great majority of MS have chosen the Option provided by the Presidency for removing the size criterion only from Articles 47 and 49, and keeping it in articles 19, 21, 23, 24, 26, and 28.

The amendments proposed by the Presidency for Article 5 are included in the consolidated text with all articles and amendments.

Note: No amendment to COMs proposal is required for Article 5. The only relevant amendment relates to keeping the word "size" in articles 19, 21, 23, 24, 26, and 28, and removing it from articles 47 and 49.

Q4: Do MS agree with the Presidency's proposal?

1.4 Article 6

The inclusion of PPPs in the IORP Directive, is one of the issues for which much discussion took place, and different views and concerns have been expressed during previous discussions and written comments. After provision of several clarifications, a big acceptance was expressed by MS, in relation to the Option provided by the Presidency to keep the COM proposal as is, and add respective clarifications in the recitals.

Based on the written answers received, big support was expressed by MS regarding the option for keeping PPPs in the Directive.

As already clarified in previous meetings, the inclusion of PPPs activities, which are allowed by National Laws, in the IORP Directive, has no intention to harmonize PPPs activities through the IORP Directive. PPPs activities are regulated by the national laws, in terms of their authorization, organizational and operating conditions, governance, prudential requirements, etc. In the absence of any harmonizing PPP prudential framework, a number of basic provisions are included in the Directive not as a mean for regulating the PPP business, but as a safeguard to ensure the IORP's proper operation, and prudential supervision, for all the IORP's activities, when they also carry out PPP business, and as minimum provisions to be taken in consideration in respective National Laws. As, PPPs business is authorised by national Laws, an IORP authorized in its Home MS to provide PPP, cannot passport to its PPP business to another MS, as is the case of occupational pensions business, which are authorised under the Directive. Such an IORP would have to apply and get a full PPP authorization/permission from the other MS, provided the other MS has a PPP regime.

In order to provide more clarification on the inclusion of PPPs in the Directive, the following text is proposed to be added in recital 14:

Recital 14:

(14) In some Member States, IORPs may also be allowed to provide personal pension products, including the pan-European Personal Pension Product (PEPP), as defined in Article 2(2) of Regulation (EU) 2019/1238 of the European Parliament and of the Council. To ensure a clear and sound organisation of such IORPs, and to protect the interests of members and beneficiaries, as well as personal pension savers, it is therefore necessary that the whole activity of the IORP be subject to prudential supervision regarding solvency and governance requirements set out in Directive (EU) 2016/2341. Directive (EU) 2016/2341 concerns the operation and supervision of IORPs as institutions and is not intended to regulate personal pension products as such. Member States should therefore retain responsibility for determining the applicable conditions and conduct rules for the distribution of such products. Articles 11 and 11a lay down harmonised procedures for cross-border activities in the field of occupational retirement provision. Where IORPs provide the PEPP, the cross-border provision of that product is governed by Regulation (EU) 2019/1238, in particular Articles 14 and 15 thereof, while the cross-border personal retirement provision other than the PEPP Product, where IORPs are authorised to carry out such activities under national law, should continue to be subject to the applicable rules of the home and the host Member State. In this case, an IORP would have to apply and get a full personal

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pension product authorisation from the other Member States, provided the other Member States has a personal pension product regime.

Q5: Do MS agree with the proposed text for recital 14 and for the amendments in Article 6?

1.5 Article 7

The important issue in Article 7 was the ring-fencing. Based on the written answers received, a big acceptance was expressed by MS, in relation to the Option provided by the Presidency to make the requirement for ring-fencing optional, and leave to MS to decide at National Level.

The amendments proposed by the Presidency for Article 7, are included in the consolidated text with all articles and amendments.

in Article 7, the second paragraph is replaced by the following:

'Where, pursuant to national law, IORPs are authorised to provide personal pension products, *Member States may decide to require that* all assets and liabilities corresponding to the personal pension provision business shall be ring-fenced, without any possibility to transfer those assets and liabilities to the other retirement provision business of the institution.

For the purposes of this paragraph, in case Member States decide to apply the requirement for ring-fencing and the requirement not to transfer assets between occupational and non-occupational personal pension product schemes, this shall not prevent asset pooling among several retirement schemes at the level of external asset managers.';

Q6: Do MS agree with the proposed text for the recital and for the amendments in Article 7?

2. Authorisation and operating requirements

2.1 Authorization - article 9

Overview of the discussions

The provision introduces a mandatory authorisation procedure for IORPs, requiring a prior prudential assessment that takes into account the nature, scale and complexity of their activities.

In order to accommodate Member State concerns, the Presidency's proposed options 2 and 3 mainly focused on introducing basic principles for prudential assessment in the Level 1 text, removing EIOPA's mandate to issue prudential assessment guidelines, introducing the submission of a scheme of operations instead of a bustiness plan, clarifying that the six-month deadline runs from the submission of a complete file application, and requiring IORPs seeking

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authorisation to extend their activities to submit a scheme of operations covering those activities.

Following the preferred options indicated by Member States during the CWP on 30 April and their written comments, several Member States showed flexibility between Options 2 and 3, with a general preference for Option 3, while Option 2 also received significant support.

In light of the above, and in line with preferred Option 3, which was supported by the majority of Member States, the Presidency proposes the following drafting for Article 9, noting that the basic principles set out therein have been slightly redrafted to improve and correct the text.

Article 9 is amended as follows:

(a) the title is replaced by the following:

'Authorisation';

(b) paragraph 1 is replaced by the following:

'1. Member States shall in respect of every IORP the main administration of which is located in their territory ensure that the IORP is authorised by the competent authority and included in a national register.

The location of the main administration shall be the place where the main strategic decisions of an IORP are made.

Member States shall require competent authorities to perform a prudential assessment as part of the authorisation of IORPs. The assessment shall take into account the nature, scale and complexity of the activities of the IORP concerned.

IORPs seeking authorisation shall prepare and submit to the competent authority a ~~business plan~~ scheme of operations for all their planned activities, detailing the financial resources available to cover current and future operating costs. The ~~business plan~~ scheme of operations shall contain projections of at least three years of the IORP's income and expenses and a breakdown of the IORP's operational costs, including where relevant, the distribution and acquisition costs and any other elements to assist the competent authorities to assess compliance with the operating requirements.

The subsequent acceptance of one or more sponsoring undertakings shall not require the IORP to undergo a new authorisation procedure.

An IORP seeking authorisation to extend its activities, including, where applicable, to accept sponsorship from multiple sponsoring undertakings, shall be required to submit a scheme of operations covering those planned activities.

The subsequent acceptance of one or more sponsoring undertakings shall not require the IORP to undergo a new authorisation procedure where its authorisation covers the acceptance of sponsorship from multiple sponsoring undertakings.'

(c) the following paragraph 1a is inserted:

'1a. Any decision to refuse an authorisation shall state full reasons and shall be notified to the IORP concerned.

Without prejudice to Article 48(9), each Member State shall make provision for a right of appeal to the courts where its competent authorities have not dealt with an application for authorisation within six months from the date of ~~its~~ receipt of a complete application file.

1b. Without prejudice to other conditions of general application laid down by national law, Member States shall ensure that the competent authority grants authorisation only where it is satisfied that the IORP is capable of operating in a sound and prudent manner, taking into account the nature, scale and complexity of its activities.

For that purpose, the home Member State shall ensure that the competent authority assesses at least whether the IORP:
(a) has submitted a credible and comprehensive scheme of operations covering its intended activities;
(b) has shown evidence that it will be in a position to comply on an ongoing basis with the requirements of this Directive;
(c) has shown evidence that it will be in a position to comply with the system of governance referred to in Title III, Chapter 1;
(d) has shown evidence that the persons who will effectively run the IORP and those responsible for key functions are fit and proper;
(e) has shown evidence that it will be in a position to hold adequate financial resources to support its operations and meet its obligations; and
(f) has shown evidence that the rules of the pension schemes to be operated are duly established and, where the sponsoring undertaking guarantees the payment of retirement benefits, supported by appropriate financing arrangements.

Q7: Do Member States agree with the above drafting of article 9?

2.2 Multi sponsor IORPs - article 9a

Overview of the discussions

The Commission proposal introduces Article 9a to formalise existing practice by allowing IORPs to operate multiple pension schemes and accept multiple sponsoring undertakings within a single scheme, while giving Member States the option to subject such schemes to the Solvency II framework instead of the IORP framework, where applicable.

The written comments received from Member States indicate an overall preference for Option 2, which reflects certain national specificities in Recital (17) and provides that the national law of the Member State pertaining to the operation of multi sponsored IORPs has to be complied with.

The recital further clarifies that the second paragraph of Article 9a is optional, in line with a request from several Member States.

In light of the above preferred option and additional Member State requests for clarifications, the Presidency presents the following drafting in recital (17):

(17) "To enhance effective and adaptable occupational retirement provision, as well as economies of scale, IORPs should be allowed to operate several pension schemes, including those with distinct investment approaches, and to accept sponsorship from several undertakings within the same scheme, while ensuring proper management and the protection of members and beneficiaries. *The possibility to operate different pension schemes and to accept sponsorship from multiple undertakings within the same scheme should be without prejudice to compliance with the requirements laid down in the laws of the home Member State for the operation of different pension schemes or schemes with multiple sponsoring undertakings. Where those laws require a certain legal form for the operation of such schemes, any IORP should be able to adapt its legal form in accordance with those laws. This should also be without prejudice to the option for the home Member State to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC."*

Moreover, as Article 9a permits Member States to require multi-sponsor schemes to be subject to the Solvency II framework (Solvency II Directive), a Member State has sought clarification as to whether this requirement could also be imposed by the host Member State in a cross-border context. It is clarified that this decision rests solely with the home Member State. Accordingly, the insertion of the word "home" in the second paragraph of Article 9a is necessary to ensure legal certainty and to prevent host Member States from imposing additional requirements on incoming IORPs.

In light of the above, the Presidency proposes the following drafting in article 9a:

'Article 9a

Multi-sponsor IORPs

Member States shall ensure that IORPs are allowed to operate different pension schemes, including those with different investment policies, and to accept sponsorship from multiple sponsoring undertakings within the same pension scheme.

The first paragraph shall be without prejudice to a decision by ~~a~~the home Member State to require that schemes with multiple sponsoring undertakings be operated under Directive 2009/138/EC.';

Q8: Do Member States agree with the above drafting of recital 17 and article 9a?

2.3 Operating requirements - article 10

Overview of the discussions

The article amendment requires IORPs to hold sufficient financial resources to cover operating costs and mandates EIOPA to issue prudential assessment guidelines to enhance supervisory convergence.

Following the preferred options expressed by all Member States in their written comments received, there is a clear preference to Option 2, to delete EIOPA's mandate to issue guidelines on prudential assessment for authorization.

In light of the above, and in line with the preferred option supported by the majority of Member States, the Presidency proceeds with the following drafting for Article 10:

(3) Article 10 is amended as follows:

(a) in paragraph 1, the following point (c) is added:

'(c) the IORP has sufficient financial resources to cover its current and future operating costs.';

~~(b) the following paragraph 3 is added:~~

~~'3. EIOPA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1094/2010, on the prudential assessment to be carried out as part of the authorisation of IORPs, as well as on the requirements laid down in Titles II and III.';~~

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Q9: Do Member States agree with the proposed drafting of article 10?

3. Cross Border Activities and Transfers (CB and domestic)

3.1 Right of Establishment and Freedom to Provide Services - article 8a

Overview of the discussions

The proposal aims to strengthen the free movement of IORPs by allowing cross-border activity and establishment in other Member States without unnecessary restrictions, while maintaining the existing home and host state supervisory framework under Articles 11 and 11a.

Following the written comments of Member States and the clarifications provided in the latest Presidency paper, there is a broad majority in favor of leaving the Article unchanged. However, in light of requests from some Member States for clarification of its scope and added value, the Presidency suggests an amendment for the purpose of clarifying that it applies to occupational retirement services.

Further to the above, the Presidency considers it appropriate to clarify, for those Member States requesting further explanation of the added value of Article 8a, that it was introduced to explicitly reaffirm within the text the well-established EU law principles of freedom to provide services and freedom of establishment in the context of cross-border activity. These principles are already inherent in EU law, and Article 8a serves to ensure their clear and transparent application in the IORP framework. The procedure for cross-border activity is set out in Article 11 of the IORP II Directive, including the allocation of competences between the home Member State (prudential supervision) and the host Member State (social and labour law and information requirements).

In light of the above, the Presidency maintains the Article, as supported by a majority of Member States, with the following redrafting:

'Article 8a

Right of establishment and freedom to provide services

1. IORPs shall be allowed to provide ~~services~~ occupational retirement services throughout the Union in accordance with Articles 11 and 11a.
2. Member States shall not restrict IORPs from establishing in their territory.';

Q10: Do Member States agree with the above redrafting of article 8a?

3.2 Cross border activities and procedures - article 11

Overview of the discussions

The Commission proposal simplifies cross-border passporting by streamlining notification procedures, shortening deadlines, strengthening supervisory cooperation, and maintaining host authorities' powers to ensure compliance with social, labor, and information requirements.

Following the preferred options of Member States during the CWP on April 30th, and their written comments, there is a clear preference for Option 2. The concerns raised by Member States and accommodated under option 2 relate, in particular, to extending the deadline for the home competent authority to issue a reasoned decision from one to two months in paragraph 4, clarifying also in paragraph 4 that the two-month deadline under paragraph 3 runs from the receipt of complete information, deleting the reference to the Pension Benefit Statement in paragraph 6, and adding in paragraph 10 that the host competent authority shall inform the home competent authority in cases of non-compliance with host information requirements, as provided for in the case of SLL.

In light of the above, and in line with the preferred option 2 supported by the majority of Member States, the Presidency proceeds with the following drafting for Article 11:

(4) Article 11 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraphs 3 and 4 are replaced by the following:

'3. Home Member States shall ensure than an IORP notifies its intention to carry out cross-border activity to its competent authority.

Member States shall require IORPs to provide the following information in effecting the notification:

(a) the name of the host Member State(s), which shall, where applicable, be identified by the sponsoring undertaking or undertakings;

(b) the name and the location of the main administration of the sponsoring undertaking(s);

(c) the main characteristics of the pension scheme or schemes to be operated for the sponsoring undertaking(s).

4. Member States shall ensure that a competent authority of the home Member State that is notified under paragraph 3 and has not issued a reasoned decision that

the administrative structure or the financial situation of the IORP or the good repute or professional qualifications or experience of the persons running the IORP are not compatible with the proposed cross-border activities, communicates the information referred to in paragraph 3 to the competent authority of the host Member State within two months of receiving the~~t~~ complete information referred to in paragraph 3**.** Member States shall ensure that the competent authority of the host Member State acknowledges receipt of that information without delay. Member States shall ensure that the competent authority of the home Member State informs the IORP in writing that the information has been received by the competent authority of the host Member State.

Member States shall ensure that the competent authority of the home Member State issues the reasoned decision referred to in the first subparagraph within two ~~one~~ months of receiving all the information referred to in paragraph 3.';

(c) paragraphs 6 and 7 are replaced by the following:

'6. IORPs carrying out cross-border activity shall be subject to the information requirements referred to in Title IV imposed by the host Member State in respect of the prospective members, members and beneficiaries which that cross-border activity concerns.~~, with the exception of the Pension Benefit Statement referred to in Article 38, which shall be subject to harmonised Union rules in accordance with paragraph 6 of that Article.~~

7. Before the IORP starts to carry out a cross-border activity, the competent authority of the host Member State shall, within one month after having received the information referred to in paragraph 3, prepare for the supervision of the relevant cross-border activities. That preparation shall relate to the requirements of social and labour law that are relevant to the field of occupational pension schemes under which the pension scheme sponsored by an undertaking in the host Member State must be operated and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. In addition, the competent authority of the host Member State shall through the means referred to in Article 59(3) and (4), communicate to the competent authority of the home Member State the legal provisions referred to in Article 59(1) which are applicable in its territory. The competent authority of the home Member State shall immediately communicate that information to the IORP.';

(d) the following paragraph 9a is inserted:

'9a. Member States shall ensure that all procedures and formalities relating to cross-border activities and procedures can be easily completed through electronic means.';

(e) paragraph 10 is replaced by the following:

'10. The competent authority of the host Member State that has reasons to consider that an IORP which conducts activities in its territory is not complying with the host

Member State's requirements of social and labour law relevant to the field of occupational pension schemes and of the host Member State's information requirements as referred to in paragraph 6, shall inform the competent authority of the home Member State thereof immediately.

The competent authority of the home Member State shall, in coordination with the competent authority of the host Member State, take the necessary measures to ensure that the IORP ends the detected breach.';

(f) in paragraph 11, the following subparagraphs are added:

'Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on IORPs.

In addition, the competent authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.';

(g) the following paragraphs 12 and 13 are added:

'12. Paragraphs 10 and 11 are without prejudice to the power of host Member States to take appropriate and non-discriminatory emergency measures to prevent or penalise irregularities within their territory, in situations where immediate action is strictly necessary in order to prevent the rights of members and beneficiaries, and where equivalent measures of the home Member States are inadequate or lacking. That power shall include the possibility of preventing IORPs, insofar as is strictly necessary, from operating in the host Member State for the sponsoring undertaking.

13. Any measure adopted under paragraphs 10 to 13 involving restrictions on the activities of IORPs shall be properly reasoned and communicated to the IORP concerned without undue delay. The competent authority of the host Member State that adopts such measure shall also communicate the measure to the competent authority of the home Member State, and in the context of paragraph 11, third subparagraph, to EIOPA.';

Q11: Do Member States agree with the proposed drafting of Article 11?

3.3 Simplified notification for existing cross-border activities - article 11a Overview of the discussions

Article 11a(1) provides that cross-border IORPs shall update previously notified information without being required to undergo a full notification procedure, while ensuring the

simultaneous notification of both the home and host competent authorities. Article 11a(2) introduces a simplified notification for non-material changes or additional sponsoring undertakings where members fully bear investment risk.

Following major concerns raised by Member States, in particular that IORPs should notify the home Member State as the primary supervisor first rather than simultaneously, the Presidency proposed that the home competent authority be notified first, which would then notify the host competent authorities without delay.

Moreover, in order to accommodate further clarifications requested by Member States regarding material changes, the Presidency proposed in recital (19) to explain "non material amendments" and to clarify that competent authorities may require an IORP not to use the simplified notification procedure if intended amendments are considered as material.

Following Member States' written comments, there is a clear preference for retaining the Presidency's drafting proposal for Article 11a described above. As this approach was supported by the majority of Member States, the Presidency proceeds with the following drafting for Article 11a and recital (19):

(5) the following Article 11a is inserted:

'Article 11a

Changes in the information notified

1. "*Member States shall ensure that in the event of a change in any of the particulars communicated under Article 11(3), points (b) or (c), an IORP gives written notice of the change to the competent authority of the home ~~and the host~~ Member State~~s~~ at least one month before making the change. The competent authority of the home Member State shall inform the competent authorities of the host Member States of the change without delay,* in order to enable the competent authorities of the home and the host Member States to fulfil their respective obligations under Article 11.

2. Member States shall ensure that where members and beneficiaries fully bear the investment risk, the notification of one or more additional sponsoring undertakings to a previously notified pension scheme, or of non-material amendments to the characteristics of that scheme, is subject to a simplified notification procedure.';

(19) It is unnecessarily burdensome to impose on an IORP that is carrying out cross-border activities in a host Member State full initial cross-border notification procedures where such IORP wishes to extend those activities to additional sponsoring undertakings or schemes in the same host Member State. Such an approach could lead to duplication of procedures, increased administrative costs and delays, without improving the

protection of members and beneficiaries. To facilitate proportionate and efficient supervision and ensure effective cooperation between the competent authorities of the home and host Member States, such extensions should be made subject to a simplified notification procedure to be completed within one month. That timeline ensures that competent authorities can carry out the necessary coordination and oversight without creating undue delays or burdens for IORPs. The simplified notification procedure should also apply with respect to *non-material amendments. These are changes which do not affect the core characteristics of the notified pension scheme, including its benefit structure, members' rights or risk profile, and which do not have a significant impact on members or beneficiaries. Competent authorities may require an IORP not to use the simplified notification procedure where it considers the intended amendments as being in fact material.*

Q12: Do Member States agree with the drafting of Article 11a and the corresponding recital 19?

3.4 Cross border transfers - article 12
Overview of the discussions

The key change in Article 12 is the introduction of a harmonized definition of "majority" based on a simple majority of members and beneficiaries or their representatives calculated on responses received, while allowing Member States to set a participation threshold of up to 25% as an additional safeguard.

However, many Member States expressed concerns that the determination of the majority should follow national rules, including the outcomes of collective bargaining agreements. Following Member States' discussions in the CWP on 30 April and their written feedback, Option 2 appears to attract broader support, provided that a more flexible approach is introduced as regards the simple majority requirement, in line with Member States' requests.

Taking into account Member States' suggestions, the Presidency proposes the following revised Option 2.

Option 1: Maintain the Commission proposal and further strengthen paragraph 2a, as suggested by some Member States, by replacing the phrase "in a timely manner" with a requirement that the information on the conditions of the transfer be made available at least one month in advance, in order to provide greater clarity.

Option 2: In addition to Option 1, the Presidency proposes greater flexibility in the article to address Member State concerns, by providing that transfer rules or procedures resulting from the outcomes of collective bargaining agreements may also apply, provided that proportionate safeguards are in place, and that in such cases the simple majority requirement shall not apply.

Note: The second subparagraph of paragraph (11) will be deleted as a drafting error.

In light of the above options, the presidency proposes the following drafting suggestions:

OPTION 1

(6) Article 12 is amended as follows:

(a) the following paragraph 2a is inserted:

'2a. Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer to be made available at least one month in advance ~~in a timely manner~~ and before the application referred to in paragraph 4 is submitted.';

(b) paragraph 3 is replaced by the following:

'3. The cross-border transfer shall be subject to prior approval by:

(a) a simple majority of the members and beneficiaries concerned, or where applicable, a simple majority of their representatives; and

(b) the sponsoring undertaking, where applicable.

For the purposes of the first subparagraph, point (a), the simple majority shall be calculated based on the received responses.

Member States may provide that, for a transfer to be approved, a participation threshold of up to 25 % of the members and beneficiaries concerned shall be reached.';

~~(c) in paragraph 11, the second subparagraph is replaced by the following:~~

~~'Where the transfer results in a cross-border activity, the competent authority of the home Member State of the transferring IORP shall also inform the competent authority of the home Member State of the receiving IORP of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. This shall be communicated within a further four weeks.';~~

OPTION 2

(7) Article 12 is amended as follows:

(a) the following paragraph 2a is inserted:

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'2a. Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer to be made available at least one month in advance ~~in a timely manner~~ and before the application referred to in paragraph 4 is submitted.';

(b) paragraph 3 is replaced by the following:

'3. The cross-border transfer shall be subject to prior approval by:

(a) a simple majority of the members and beneficiaries concerned, or where applicable, a simple majority of their representatives; and

(b) the sponsoring undertaking, where applicable.

For the purposes of the first subparagraph, point (a), the simple majority shall be calculated based on the received responses.

Member States may provide that, for a transfer to be approved, a participation threshold of up to 25 % of the members and beneficiaries concerned shall be reached.

Member States may allow IORPs not to apply the first subparagraph, point (a), where specific transfer rules or procedures resulting from the outcomes of collective bargaining agreements apply, provided that such rules or procedures include proportionate safeguards to ensure adequate engagement and protection of members and beneficiaries. In such cases, the participation threshold referred to in the third subparagraph shall not apply'.

~~(c) in paragraph 11, the second subparagraph is replaced by the following:~~

~~'Where the transfer results in a cross-border activity, the competent authority of the home Member State of the transferring IORP shall also inform the competent authority of the home Member State of the receiving IORP of the requirements of social and labour law relevant to the field of occupational pension schemes under which the pension scheme must be operated and of the information requirements of the host Member State referred to in Title IV which shall apply to the cross-border activity. This shall be communicated within a further four weeks.';~~

Q13: Which of the two options and drafting proposals do Member States prefer?

3.5 Domestic Transfers – Article 12a

Overview of the discussions

The proposed Article introduces minimum rules for domestic transfers, including a requirement for the competent authority to approve such transfers. Following Member States' concerns

regarding the requirement for prior approval by the competent authority and the need to regulate transfers at national level, the Presidency's proposed options replace the mandatory prior approval with an advance notification procedure and further streamline domestic transfer procedures in order to accommodate Member States' requests for greater flexibility at national level.

Following the discussions at the CWP on 30 April and the written comments submitted by Member States, views were divided between Options 2 and 3, with Option 2 receiving broader support from the majority of Member States. In light of the above, the Presidency retains the drafting of Option 2, as set out below.

'Article 12a

Domestic transfers

"Member States shall ensure that transfers between IORPs authorised within the same Member State of all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, and corresponding assets or cash equivalent thereof, are governed by simple and transparent procedures that ensure the protection of members and beneficiaries and the continued sound management of the pension schemes concerned."

~~Such transfers shall be subject to prior approval by the competent authority, which shall verify at least all of the following:~~

~~(a) that the information submitted is complete and accurate;~~

~~(b) that the administrative structure, financial situation, and the good repute or professional qualifications and experience of the persons who effectively run the IORPs concerned are compatible with the proposed transfer;~~

~~(c) that the long-term interests of members and beneficiaries are adequately protected;~~

~~(d) that the assets to be transferred are sufficient and appropriate to cover the related liabilities, technical provisions, and other obligations and rights.~~

Member States shall ensure that competent authorities have appropriate supervisory powers with regard to such transfers.

Member States shall ensure that the transferring IORP makes available to the members and beneficiaries concerned and, where applicable, to their representatives, the information on the conditions of the transfer in a timely manner.

Where a Member State makes domestic transfers subject to the prior approval of the members and beneficiaries concerned, the approval procedure shall not be more stringent than the procedure set out in Article 12(3).'

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4. Quantitative requirements

4.1 Articles 13 and 14

The important issue in Article 13 was the inclusion of PPP, which has been covered in previous sections.

As far as Article 14 the major issues were the maximum allowed recovery period in case of a deficit, i.e. underfunding, relating to IORPs which operate occupational retirement schemes, and which provide insurance covers and/or guarantees, while the IORP does not carry out any cross border business, and the same issue when the IORP carries out simultaneously cross border business.

Based on the written answers received, a big acceptance was expressed by MS, in relation to the Option of deleting the provision with the 10 years maximum limit, and introducing a provision based on which the MS will be responsible for setting a maximum recovery period for such deficits and types of retirement schemes, at National level, taking in consideration local practices and circumstances, based on a justified and transparent manner.

The other important issue~~r~~ was the reinstatement in Level 1 of paragraph 3, regarding the requirement that in case of cross border activities the technical provisions should be fully funded, for the total range of pension schemes operated.

Based on the written answers received, a broad support was expressed by MS, for reinstatement of paragraph 3. Taking in consideration various suggestions from MS, the Presidency suggests the following re-wording for paragraph 3:

In the event of cross-border activity, the technical provisions shall at all times be fully funded, in respect of the total range of pension schemes operated.

In case, an IORP which carries out cross-border activity, gets in a position of having insufficient assets to cover the technical provisions the CA of the home member state shall promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected.

In case an IORP, makes a notification requesting permission for carrying out a cross-border activity, permission will not be granted if at that point of time the IORP has insufficient assets to cover the technical provisions.

Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) in the first subparagraph, the introductory wording is replaced by the following:

'Home Member States shall ensure that their competent authorities have the necessary powers to allow an IORP, for a limited period of time, to have insufficient assets to cover the technical provisions. In this case, the competent authorities shall require the IORP to adopt a concrete

and realisable recovery plan with a timeline in order to ensure that the requirements of paragraph 1 are met again. The plan shall be subject to the following conditions:';

(ii) the following subparagraph is added:

'The limited period of time referred to in the introductory wording of the first subparagraph shall be determined by national law and *Member States shall be responsible for setting a maximum recovery period at national level, taking into account local practices and circumstances in a justified and transparent manner* ~~shall in any case not exceed ten years.~~';

(b) paragraph 3 is *replaced by the following:*

'In the event of cross-border activity, the technical provisions shall at all times be fully funded, in respect of the total range of pension schemes operated.

In case an IORP which carries out cross-border activity gets in a position of having insufficient assets to cover the technical provisions the competent authorities of the home Member State shall promptly intervene and require the IORP to immediately draw up appropriate measures and implement them without delay in a way that members and beneficiaries are adequately protected.

In case an IORP makes a notification requesting permission for carrying out a cross-border activity, the competent authorities of the home Member State shall not grant permission if at that point in time the IORP has insufficient assets to cover the technical provisions'.;

Q14: Do MS agree with the proposed text for the amendments in Article 14?

4.2 Article 16

The proposal keeps the existing requirement for an available solvency margin equal to the assets that are free of any foreseeable liabilities minus intangible items, for IORPs which themselves, and not the sponsoring undertakings, underwrite covers against biometric risk or provide guarantees (either an investment performance guarantee or a guaranteed level of the benefits).

In paragraph 4 of Article 16, 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 by National Law.

Based on the written comments received, all MS expressed support for keeping the COM proposal as is, with one small typo error correction, with the exception of one MS which raised concerns about inclusion of PPPs therein.

The small amendment proposed by the Presidency for Article 16 is included in the consolidated text with all articles and amendments.

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Q15: Do MS agree with the proposed text for the amendment in Article 16?

4.3 Article 17

Based on the written comments received, the great majority of MS have chosen Option 2, which is about keeping the current parameters as defined in Level 1, delete from the text the provision based on which the parameters can be adjusted through Commission Delegated Act, and replace it with a review clause with specific timelines, based on which the parameters in Articles 17 and 18 will be adjusted within Level 1 text, after an appropriate and comprehensive study based on public sources is carried out.

The amendment proposed by the Presidency for Article 17 is included in the consolidated text with all articles and amendments.

in Article 17, the following paragraph 7 is added:

'7. ~~The Commission is empowered to adopt delegated acts in accordance with Article 64a to amend the numbers and percentage values referred to in this Article and in Article 18.~~' *The numbers and percentages in Articles 17 and 18 shall be amended, after a relevant appropriate and comprehensive study based on public sources is carried out by the Commission and accompanied by a legislative proposal, within a period of 18 months after the entry into force of this Directive.';*

Q16: Do MS agree with the proposed text for the amendment in Article 17?

4.4 Article 18a

The Presidency would like to point out that this article relates to IORPs which themselves, and not the sponsoring undertakings, underwrite covers against biometric risk or provide guarantees (either an investment performance guarantee or a guaranteed level of the benefits).

Based on the written comments received, the positions/views expressed by MS in relation to the 3 options provided about the scope and types of scenarios and about the projection period and the parameters to be used under each scenario, were split, with option 2, which is for providing flexibility for MS to define all these at National Level, receiving the higher and stronger (in terms of voting weight) acceptance.

With regards to the option provided to the supervised entities for waiver of ITS requirement, option 1, which relates to keeping the provision, but provide more details regarding the wording "... provided that such regulatory own requirements are risk-based, at least in relation to market and longevity risks, a significant number of MS have chosen the option relating to

keeping the provision, but provide more details regarding the wording "... provided that such regulatory own requirements are risk-based, at least in relation to market and longevity risks".

The amendments proposed by the Presidency for Article 18a are included in the consolidated text with all articles and amendments.

Q17: Do MS agree with the proposed text for the amendment in Article 18a?

5. Investments

5.1 Article 19 – Investment rules

The majority of MS were in favour of option 3. One MS expressed that it preferred an enhanced version of option 3 i.e. return to the provisions of the current Directive. Two member states opted for option 1 but were open to option 3 as well. Some MS opted for option 1.

In view of MS favouring option 3, the PCY suggests the following text which mirrors the OECD guidelines.

Furthermore, the PCY suggests certain amendments to article 19 regarding MS ability to prevent IORPs from investing in certain asset classes. Also a provision is also suggested to be included in the text, according to which, MS shall ensure that there are procedures for IORPs to request derogations from those rules, if the applicant IORP can demonstrate that the derogation is required by, or consistent with, the prudent person principle.

A detailed explanation for the above suggestions is set out below:

The presidency would like to suggest to MS to consider the option of not limiting exposure to listed equity. The presidency understands that limiting equity exposure in a pension fund often stems from a desire to reduce short-term volatility. However, over a long-term horizon (20–30 years), this typically results in significant revenue shortfalls compared to a 100% equity-tilted portfolio. Historical data consistently shows that equities outperform fixed-income assets. By capping equity exposure, a fund misses out on the extra return investors demand for taking on the higher risk of stock markets. The presidency understands that even a low annual underperformance on account of an over-allocation to "safe" bonds can lead to a considerable accumulation gap in the final value of a pensions fund value of a fund. Lower accrued assets under management invariably lead a reduction in retiree benefits. The presidency would therefore suggest that at least the defined contribution pension funds where members bear investment risk, should not operate subject to a listed equity exposure limit.

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In addition, the presidency notes that a number of pension funds have commenced diversification into private markets, notably private equity and infrastructure. These asset classes are viewed as a necessity diversification and risk management tool in pension portfolio construction. Private markets have historically outperformed public markets due to an illiquidity premium and the ability of investors to become active vis-à-vis the management of investee companies. In light of the fact that private market investments provide access to the "real economy", especially in the Union, where companies tend to stay private longer, the presidency suggests it should be allowed to allocate a reasonable proportion of a pension funds portfolio to such real economy assets. Institutional benchmarks, have demonstrated how an allocation of 15–20% to illiquid alternatives can push out the "efficient frontier," providing higher returns per unit of risk.

The above considerations apply to all pension funds with long-dated liabilities. Volatility of equities and the illiquidity of private markets, are integrated into the risk management of such long-term investors, as pension funds can forecast cash outflows decades in advance, allowing them to reap the above mentioned illiquidity premium.

The presidency does, however, take note of Member States' concerns that liquidity can be a more sensitive issue in defined benefit funds that are at the end of their lifecycle (in "run-off) and even certain defined contribution funds. When volatility or liquidity is a sensitive issue, Member States should therefore be able to further restrict equity or private market allocation in individual cases where this is warranted, for example when the average participant's time to retirement is less than 10 years.

The reverse is also suggested to be envisaged, meaning that an IORP should also be able to derogate from the investment limits, if volatility and illiquidity are not an issue, for example if the average participant's time to retirement is more than 20+ years.

Proposed text:

(a) paragraph 6 is replaced by the following:

'In accordance with the provisions of paragraphs 1 to 5, Member States may ~~empower the competent authority~~, for *the* IORPs authorised in their territories, ~~to~~ lay down more detailed rules, *including quantitative rules*, provided they are prudentially justified. *Such rules must, however, be set in accordance with the following principles:*

a) Portfolio limits should not inhibit adequate diversification or impede the use of asset-liability matching or other widely-accepted risk management techniques and methodologies

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b) Portfolio limits should not impede investments in foreign assets as long as currency matching requirements between the IORP's, or where appropriate, the pension scheme's assets and liabilities are met.

~~Any such rules shall be applied only where the investment risk is borne by the members and beneficiaries.~~ However, in such cases, IORPs shall not be prevented from:

(a) investing up to ~~70~~ 100 % of the assets covering ~~the technical provisions or of~~ the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through MTFs or OTFs, and deciding on the relative weight of those securities in their investment portfolio;

(b) investing up to 30 % of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed;

(c) investing *up to 20% of the assets covering the whole portfolio for schemes in which the members bear the investment risks* in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs;

(d) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments, European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.';

(e) investing in a particular asset class

Where rules laid down pursuant to this paragraph establish maximum levels of investment by asset class, Member States shall ensure that there are procedures for addressing departures from such limits, including where they result from market movements, valuation changes or changes in the value of the portfolio as a whole, within specified time limits, providing however, sufficient flexibility to avoid forced disposals of assets under unfavourable market conditions.

Member States shall ensure that any quantitative limits laid down pursuant to this paragraph are reviewed at regular intervals, in order to assess whether they remain prudentially justified and do not unnecessarily restrict the ability of IORPs to implement investment strategies consistent with paragraphs 1 to 5.

6a. Member States that lay down quantitative rules or other limits or conditions pursuant to paragraph 6 shall ensure that there are procedures for IORPs to request derogations

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from those rules, if the applicant IORP can demonstrate that the derogation is required by, or consistent with, the prudent person principle.

7. Paragraph 6 shall not preclude the right for Member States to require the application to IORPs authorised in their territory of more stringent investment rules also on an individual basis provided they are prudentially justified, in particular in light of the liabilities entered into by the IORP.

(b) paragraph~~s 7 and~~ 8 ~~are~~ *is* deleted;

Q18: Do MS agree with the PCY's proposal?

Members and beneficiaries sustainability preferences

MS views were split between option 3 and option 4 of the PCY's proposals . However most MS opted for option 3. In view of this, paragraphs 1c and 1d have been deleted.

5.2 Article 30 – SIPP

The PCY's proposed text found broad support from MS. A minor amendment, as per a MS suggestion, was made to the fourth subparagraph, in order to clarify that separate statements of investment policy shall be prepared for each different investment policy.

6. System of Governance – Art 20-35

Following the discussion and the comments from MS, Title III regarding the system of governance found broad support and did not overall encounter opposition or resistance from MS. Few comments and remarks were raised by MS to clarify or adjust some of the provisions. MS also stressed the importance of keeping the minimum harmonisation approach of the Directive and that any new requirements should not counter the simplification and burden reduction objectives. In light of the above, the PCY has made some changes to the provisions to accommodate MS concerns and comments, where possible.

In some instances, some of the points from MS have not been taken on board for the following reasons:

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- On the use of "persons who effectively run the IORP" in Art 21 and 22 - It is the PCY understanding that the term "persons who effectively run the IORP" has a wider scope than the term Administrative, Management or Supervisory Body (the "AMSB"), as it includes, apart from the members of the AMSB, members of the IORP's senior management. The latter can be understood as persons who are responsible for high level decision making within the organisation. The PCY understands that it was COM intention to extend some requirements in Articles 21 and 22 beyond the AMSB.
- On Art 23(3) point (i) and overlap with Directive 2006/54/EC. It is the PCY understanding that the scope of the IORP II Directive (Directive (EU) 2016/2341) is, in this respect, partly different and broader than that of the above mentioned Directive. While Article 23 of the IORP II Directive applies to a wide range of persons involved in the governance and risk management of an IORP, including members of the management body, it is not limited to employment relationships. By contrast, the Directive 2006/54/EC is confined to workers. Accordingly, certain persons covered by Article 23 of the IORP II Directive, such as members of the management body who do not qualify as employees, may fall outside the personal scope of the Directive 2006/54/EC. Finally, the point is worded in a very high level manner.

The PCY would like to highlight that general approach taken regarding the proportionality/size requirements will also apply in this Title, where relevant.

7. Information to be given to prospective members, members and beneficiaries, Articles 36 - 43

7.1 Disclosures where IORPs provide personal pension products other than PEPP – Article 36

Most MS opted for option 2 proposed by the PCY, to amend the text of paragraph 4, so that a more general approach would be adopted, allowing information issues to be dealt with at MS level. Also to remove provision for EIOPA mandate.

7.2 Pension Tracking Systems – Article 37a

There was wide support by MS for option 3 proposing to delete article 37a and the definition of PTS.

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7.3 Pension Benefit Statement (PBS) and Supplementary Information – Articles 38 – 39

General Provisions - Article 38

The vast majority of MS opted for option 4 proposing to delete paragraph 6, thus deleting provisions for Union standardised PBS.

7.4 Pension Benefit Statement - Article 39

There was ample support by MS for option 2 of the PCY's proposal .

An additional amendment, based on MS comments to what was proposed in option 2, has been included in point (g) whereby the phrase "and bear all or part of the costs" has been added. This amendment makes point (g) less burdensome, as it excludes IORPS from the obligation to provide a breakdown of costs, in cases where members do not bear all or part of the costs (i.e. DB funds).

In light of the above the PCY proposes the following amendments to the text:

in Article 39, paragraph 1 is amended as follows:
(a) the following point (ba) is inserted:
'(ba) the Member State in which the IORP is authorised and the names of the competent authorities of that Member State';

(b) point (d) is replaced by the following:

'(d) information on pension benefit projections based on the retirement age as specified in point (a), and a disclaimer that those projections may differ from the final value of the benefits received, including, where applicable, that the retirement benefit may be variable;';

(c) point (g) is replaced by the following:

'(g) where members bear investment risk or can take investment decisions, ***and bear all or part of the costs***, information on the costs imposed ~~and their impact~~, including:
(i) a breakdown of all costs incurred, directly and indirectly, by members and beneficiaries over the previous 12 months ~~and on compounded basis since the member joined the scheme concerned~~, indicating at least the costs of administration, ~~the costs of safekeeping the assets,~~ and the investment costs incurred in connection with the management of assets ~~and portfolio transactions~~;
~~(ii) an estimation of the impact of the costs on the final capital accumulated;';~~

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(d) the following points (i) and (j) are added:

'(i) where members bear investment risk, information on the past performance of the pension scheme or, where applicable, the investment selection made, covering performance of a minimum of 10 years or, in cases where the scheme or the relevant investment option have been provided for less than 10 years, covering all the years for which the pension scheme or the relevant investment option have been provided;';
(j) where members bear investment risk and are able to select between investment options, a brief indication of the investment selection made, including the number of options selected, the proportion of assets invested in each option and an indication of the risk level of the selection made in summary form.';

(e) the following subparagraphs are added:

'For the purposes of point (d), where the pension benefit projections are based on economic scenarios, that information shall include at least a best estimate scenario, a favourable scenario and an unfavourable scenario. The estimated future value of retirement benefits shall be shown in real terms together with a short narrative explanation.
~~For the purposes of point (g)(ii), the costs shall be shown at least in monetary terms and as a percentage of contributions over the previous 12 months and since the member joined the scheme, respectively.~~
For the purposes of point (i), information on past performance shall be accompanied by the statement 'past performance is not indicative of future performance'.';

Q19: Do MS agree with the PCY's suggestion for article 39?

7.5 Underperformance and disclosures to members and beneficiaries – Article 41a

Most MS showed support for option 3, for deletion of this article.

The presidency notes that there is no support for the performance benchmarks established by competent national authorities, as set out in the Commission's proposal of Article 41a. The presidency therefore proposed to delete this article. In an interest not to entirely lose sight of the internationally acknowledged need to performance monitoring, the presidency proposes to embed this notion within the article dealing with the statement of investment policy. The presidency's premise is that every IORP maintains a statement of investment policy that identifies performance benchmarks tailored to its specific asset allocation and investment strategy. Such benchmarks provide an objective yardstick to determine if the IORP is fulfilling

/complying with the risk profile in their statement of investment policy, for example the classical 60/40 equity-bond split.

The presidency also notes Member States' preference for sound, but least intrusive supervision. The presidency suggests that an effective, but not intrusive, approach, would be based on "comply or explain", meaning that IORPs should be able to justify why a specific benchmark was chosen for each asset class. Instead of direct intervention in terms of divergences from the appropriate benchmarks (which Member States have rejected), the presidency proposes that IORPs regularly (e.g., every three years) review their benchmarks to determine whether they remain aligned with asset allocation and investment strategy. As benchmarks indicate mostly theoretical returns (they normally don't pay fees), IORPs should measure their security selection against the market index return (gross) and their cost efficiency against the market index return minus their cost of index replication (net).

In light of the above, the presidency proposes the following text to be added to article 30:

(x) Member States shall ensure that an IORP adheres to its Statement of Investment Principles. In this respect, Member States shall ensure that the investment manager of an IORP follows the investment strategy set out in the Statement of Investment Policy and that the instructions an IORP gives to its external investment managers follow the Statement of Investment Policy Principles.

Member States shall ensure that IORPs regularly review the appropriateness of their performance benchmarks contained in their Statement of Investment Policy Principles. Member States shall ensure that an IORP compares its performance against the benchmarks listed in the Statement of Investment Policy, on a multi-year annualized basis in gross and net terms.

Member States shall ensure that, where an IORP identifies that its performance, over a multi-year horizon using a rolling reference period, materially deviates from the above performance benchmarks, it takes action to remedy the deviation.

Q20: Do MS agree with the PCY's proposal?

7.6 Articles 41, 42, 43

There was broad support for the PCY's proposal on articles 41, 42 and 43.

Some MS provided some additional comments and drafting suggestions on article 41. In light of the above, the PCY has made some changes to the provisions to accommodate MS concerns and comments, where possible.

PCY's suggestion for article 41 included in the previous presidency paper to add at point (a) of paragraph 2, the wording "where members bear investment risk or can take investment decisions", has been moved at the beginning of paragraph 2, so as to exclude DB funds from the requirements of paragraph 2 and thus make the provision less burdensome.

Furthermore, some additional simplifications have been effected on article 41, i.e. information on costs "over the previous 12 months" is suggested to be replaced by "the previous calendar year" and the sentence "presented at least in monetary terms, and an estimation of the impact of the costs on the final capital accumulated;" is also suggested to be deleted, in order to bring the provisions of article 41 in line with the corresponding provisions' deletion suggested in article 39.

8. Business Conduct – Art 44a – 44d

On the new Chapter IV and the business conduct rules, there was overall support for the changes proposed by PCY to Articles 44a, 44c and 44d aimed at simplifying the provisions also in light of the minimum harmonization nature of the Directive, the need to ensure coherence with existing national framework and avoiding duplication and administrative burden. Regarding Article 44b, the PCY had proposed two options: the deletion of the provision or a revised wording. The vast majority of MS asked for the deletion.

9. Supervision - Art. 45-59

Regarding supervision, there was a large support from MS regarding the PCY suggestions on Articles 47, 49, 50, 50a, 51, 55a and 59 with just minor changes. Following a comment from a MS, the PCY also proposes to delete the new paragraph 48(1b) since there is a duplication with the second sentence of Article 47(4). On Article 49, various MS expressed concerns with the proposed 2nd subparagraph of para 1b and the PCY suggests to delete it. In addition, a small clarification has been introduced in paragraph 1a, where the PCY proposes to specify that the reference is to 46(1) instead of Art 46 as a whole since part of Art 46 may be outside competent authorities' role. Regarding Article 49a and the supervisory dialogue, the PCY had proposed two options: either a more limited version of the Article or its deletion. Following MS comments, the majority voiced skepticism and asked for the deletion of the Article stressing the need to ensure flexibility and for letting MS to decide.

Articles 47 and 49

As per relevant comments provided under Article 5 above, the great majority of MS have chosen the Option provided by the Presidency for removing the size criterion only from Articles 47 and 49, and keeping it in articles 19, 21, 23, 24, 26, and 28.

As a result, in relation to articles 47 and 49, the words 'size, nature, scale and complexity' are replaced by 'nature, scale and complexity'.

10. Final provisions and IDD Directive

In line with the outcome regarding Article 37a, the proposed amendments to IDD to introduce a definition and an Article on the PTS found vast opposition by MS and are deleted.

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