aba Arbeitsgemeinschaft für
betriebliche Altersversorgung e.V.

aba-position paper on the European Commission's Proposal for a amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision

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Table of contents

1 General remarks: Most of the European Commission's proposals run counter major policy objectives ..... - 16 -

2 Title I: General provisions ..... - 20 -

2.1 Article 4 & Recital 4: Optional Extension of Scope – not needed in an EU minimum harmonisation directive ..... - 20 -

2.2 Article 6 (3): Inclusion of "professional association or body" in the definition of "sponsoring undertaking" – no mixing of different roles ..... - 21 -

2.3 Article 6 (21): Definition of "personal pension product" – don't mix regulation for occupational pension schemes and personal pension products ..... - 22 -

2.4 Article 7: Activities of an IORP – National differences in the delineation between second and third pillar must be respected ..... - 22 -

2.5 Article 9a: Multi-sponsor IORPs – Role of social partners and sponsoring undertakings should be acknowledged ..... - 22 -

2.6 Articles 11 and 12: Cross-border activities and procedures and cross-border transfers – Recognize the reasons for the limited cross-border activity of IORPs ..... - 23 -

2.7 Article 12a: Domestic Transfers – to be deleted without replacement ..... - 24 -

3 Title II Quantitative Requirements ..... - 24 -

3.1 Article 14: Temporary Underfunding of technical provisions – more investment opportunities for IORPs operating DB schemes, particularly for investments in illiquid asset classes which is in the interests of all occupational pension stakeholders ..... - 24 -

3.2 Articles 17 and 18: Required Solvency Margin – no delegated acts by the EU Commission ... - 24 -

3.3 Article 18a: Internal Stress Testings – no SII like solvency regulation for DB IORPs through the backdoor ..... - 25 -

3.4 Article 19: Investment rules - Proposed changes are the opposite of liberalization for DB systems ..... - 27 -

4 Title III Conditions governing activities ..... - 29 -

4.1 Article 21 (1(b)): General governance requirements – conflicts of interest and internal reviews taking into account not only the downscaled criteria "nature, scale and complexity of the risks inherent in the activities of the IORP" ..... - 30 -

4.2 Article 21 (4/4a): Compliance Function – we continue to reject this, now also based on years of experience ..... - 31 -

4.3 Article 21 (6): Person(s) who effectively run the IORP — keep MS' right to allow only one person - 31 -

4.4 Article 21 (8 and 9) and Article 22 (2a): selecting members to the management or supervisory body – neither a contribution to SIU nor to reducing bureaucracy ..... - 31 -

4.5 Article 21 (10): Means, methods and powers of competent authorities – No lack of NCA powers to ensure compliance with government requirements ..... - 32 -

4.6 Article 22 (2): Continuous Assessment of Fitness and Propriety – Feasibility with an acceptable cost-benefit ratio is necessary ..... - 32 -

4.7 Article 23 (3i): Remuneration policy – repeating "equal pay for equaly work" is neither a contribution to SIU nor to reducing bureaucracy ..... - 32 -

4.8 Article 26(2): Internal Audit Function – no action must also be possible ..... - 33 -

4.9 Article 28 (2j): Own-risk assessment – no surveys of members and beneficiaries on risks and risk tolerance limits in collective pensions schemes ..... - 33 -

4.10 Article 30: Statement of Investment Policy Principles (SIPP) – of no concern to the general public ..... - 33 -

4.11 Article 31 (5): Outsourcing – no breakdown of outsourcing costs and recognition of the special role of sponsoring undertakings ..... - 34 -

4.12 Article 33: Depositary Requirement – German IORPs have "Sicherungsvermögens-Treuhänder" - 34 -

5 Title IV: Information to be given to prospective members, members and beneficiaries ..... - 35 -

5.1 Article 36: Principles – No EIOPA Guidelines for Information requirements; the distinction between occupational pension schemes and personal pension products to be made by MS- 35 -

5.2 Article 37: Pension Tracking Systems – General Information - the added value of extending the term to 10 years for occupational pension schemes with collective investments is questionable ..... - 36 -

5.3 Article 37a: Pension Tracking Systems – Responsibility lies with the MS; no cross-pillar EU standards in the revised IORP II Directive ..... - 36 -

5.4 Article 38: General provisions – No EU standardized format and structure of the Pension Benefit Statement; no alignment with PEPP regulation ..... - 38 -

5.5 Article 39: Pension Benefit Statement and Article 40 Supplementary Information – Unnecessary new requirements especially for cost information and for projections are to be avoided; appropriate distinctions (type of pension scheme, collective or individual) are necessary.... - 40 -

5.6 Article 41: Information to be given to prospective members – A reasonable cost-benefit ratio must be ensured; the type of the pension scheme must therefore be taken into account ..... - 41 -

5.7 Article 41a: Information to be given to members and beneficiaries in the case of underperformance – IORPs performance must not be held against unsuitable benchmarks resulting mainly from consumer protection and ignoring national labour law ..... - 42 -

5.8 Article 42: Information to be given to members during the pre-retirement phase – information yes, but no advice or liability ..... - 43 -

5.9 Article 43: Information to be given to beneficiaries during the pay-out phase – appropriate distinctions (type of payouts: payout type like annuity, withdrawal plan, installment payments; collective/individual) must therefore be taken into account ..... - 43 -

5.10 Articles 44a-d: Business Conduct Rules – not appropriate for collective pension schemes, in particular for DB schemes ..... - 44 -

6 Title V: Supervision ..... - 45 -

6.1 Articles 45, 45a and 48: Supervisory Powers and Resources – more tasks and resources for supervisory authorities have to be based on a cost-benefit analysis ..... - 45 -

6.2 Articles 49(1b), 49a: Regular Supervisory Dialogue – NCAs should also work in a risk-oriented manner and not take over main tasks of IORPs and their stakeholders ..... - 45 -

6.3 Article 50: Information to be provided to the competent authorities – Massive expansion of EU reporting requirements for IORPs; contradiction to the EU approach to reducing bureaucracy ... - 46 -

6.4 Article 50a: Supervision of outsourced functions and activities – Focus on what is important and critical for IORPs ..... - 47 -

6.5 Article 51: Transparency and Comparison – no comparison of supervisory approaches and pension schemes on a single public website ..... - 47 -

6.6 Article 55a – Collaboration Platforms – no further strengthening of EIOPA, revised Budapest Protocol is sufficient ..... - 48 -

6.7 Article 62 – Evaluation ..... - 48 -

Annex I: Schematical Comparison between personal pension products and occupational pension schemes ..... - 50 -

Annex II: Mögliche politische Fragen zur EU-Altersvorsorgepolitik und zum EbAV-II-Überarbeitsvorschlag - 51 -

Annex III: Links zu weiteren Positionierungen zur Überarbeitung der EbAV II-Richtlinie ..... - 52 -

Executive Summary

1. Relevance for Occupational Pensions in Germany: In Germany, around 50% of employees are covered by an occupational pension promise. **Strengthening occupational pensions is a clear policy objective in Germany, as they offer many advantages over individual personal pensions**. Occupational pensions make use of the **benefits of large collectives**, in particular:

- the possibility to cover biometric risks and to pursue efficient and return-oriented investment strategies,
- the use of economies of scale,
- the involvement of employer and employee representatives in governance and decision-making, thereby building trust.

The pension provider and the framework conditions of the pension scheme are selected by the social partners or by employers. This framework regularly ensures that entire workforces (or large parts thereof) are included in the pension system. Low-income subsidies, which were improved by the Second Occupational Pensions Strengthening Act, help employees with lower incomes to build up occupational pension entitlements. Occupational pension schemes therefore differ fundamentally from personal pension products, where the individual consumer selects a provider and purchases a financial product.

2. Occupational pension schemes organised through Institutions for Occupational Retirement Provision (IORPs), which often span over decades, should be strengthened and further developed without undermining the high level of trust they enjoy in Germany. German IORPs – "Pensionskassen" and "Pensionsfonds" – cover 10.5 million members and almost 1.4 million beneficiaries. Behind these systems stand tens of thousands of sponsoring undertakings which remain liable for defined benefit (DB) promises made over past decades. In addition, following the Occupational Pensions Strengthening Act, around 30 social partner models ("Sozialpartnermodelle") have been established – collective defined contribution (DC) schemes in which social partners are involved in governance and implementation.

Regulation must always be proportionate, with an appropriate cost-benefit ratio. In line with the principles of "Better Regulation", we therefore call for a **comprehensive impact assessment** of the proposed IORP II review, involving the affected Member States (MS), in particular with regard to:

- increased costs and financial implications (for members, beneficiaries, sponsoring undertakings and supervisory authorities),
- further impacts on pension schemes (including DB/DC, collective/individual designs, the role of social partners, and trust in long-term schemes),
- social policy effects (e.g. by making employers turn towards less bureaucratic benefits outside of old-age provision).

3. **The character of the IORP II Directive as a supervisory minimum harmonisation directive is appropriate and should be retained**. This approach allows MS and national supervisors to take due account of national labour, social and tax law, all of which are of central importance for occupational

pensions. We therefore reject the European Commission's proposal to introduce full EU harmonisation for IORPs through **delegated acts and EIOPA guidelines** (Level II and Level III legislation). Such an approach would deprive MS and national supervisors of the ability to adequately regulate the diversity of IORPs and pension systems.

Moreover, it is inappropriate to regulate occupational pensions – particularly collective schemes involving social partners and/or sponsoring undertakings – like individual financial products. We are concerned that the European Commission has ignored key recitals of the current IORP II Directive, in particular Recital 32 (recognising IORPs as institutions with a social purpose that should not be treated like purely financial service providers) and the statement that "[t]heir social function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged and supported as guiding principles of this Directive". The same applies for Recital 77, which is hesitant on the further development of solvency models at Union level.

4. Objectives of the Review: We cannot comprehend the European Commission's apparent objective of using numerous additional requirements – associated with significant implementation costs and major impacts on all occupational pension stakeholders – to **drive market consolidation** (see also the planned evaluation under Article 62). "Scaling up" IORPs is extremely complex, as occupational pensions typically involve a wide variety of benefit promises, usually including guarantees. Scaling up therefore requires the involvement of additional legal areas and stakeholders. The Commission seeks to exert supervisory pressure on IORPs but provides neither a proper problem analysis nor viable solutions.

The proposal is also inconsistent with the overarching objective of **reducing bureaucracy** ("25%"), as well as with the intended relief for SMEs and the regulatory approaches chosen in recent years for banks, insurers and currently for the Pan-European Personal Pension Product (PEPP).

5. Conflicting Policy Goals: Most of the Commission's proposals **run counter to key national and European policy objectives**, because:

- The creation of numerous new – and often unsuitable – requirements for collective pension schemes will **neither strengthen existing schemes nor facilitate the creation of new ones**.
- Since most proposals increase costs without a clear added value, they are unlikely to lead to **more pension assets** being accumulated by IORPs.
- While aba supports the goal of improving IORP **performance**, aligning DB schemes with Solvency II-type insurance regulation would push IORPs away from capital-market-oriented investment strategies.

We fear that the proposed IORP II revision primarily serves to promote individual pension products apparently favoured by DG FISMA and EIOPA. The PEPP Regulation of July 2019 has so far resulted in only two providers EU-wide, yet the Commission envisages deregulation and even tax incentives for PEPP.

6. MS Competence for Pensions: Defining the roles of the different pension pillars is a responsibility of the MS. Key issues in funded pensions include their collective or individual design, the role of social

partners and employers, the types of pension institutions and providers, guarantees (DB/hybrid/DC), payout arrangements, and the tax and social security framework. These issues go far beyond supervision, even though supervision has a significant impact. The Commission's proposal would move the IORP II Directive towards full EU harmonisation, which disregards existing pension systems and their stakeholders and risks dismantling established structures, appears primarily to serve the interests of EU authorities.

The responsibility for digital, cross-pillar pension information systems (Pension Tracking Systems) also lies with the MS. We therefore reject the creation of an EU standard via prudential legislation in general and via the IORP II Directive in particular, as it applies only to IORPs.

Specific Proposals

1. In a minimum harmonisation directive, the following provisions are inappropriate and should be removed:

- **Empowerments for the Commission to adopt delegated acts** and for **EIOPA to develop technical implementing standards and issue guidelines.**
- **Numerous new tasks for supervisory authorities and a massive expansion of reporting obligations for IORPs, leading to significant bureaucratic growth.**
- **A systematic and generally undifferentiated application of insurance regulation to IORPs.**
- **Domestic transfers (Article 12a).**

2. Due account must be taken of the **specific nature of IORPs and pension schemes**. IORPs are not financial service providers, and occupational pension schemes are not financial products.

- The IORP II Directive should apply only to occupational pension schemes. The **mixing of regulation for occupational and personal pensions** should be strictly avoided. If the extension of the IORP II Directive to include the offering of personal pension products is retained, it must not lead to additional, unsuitable requirements for collective schemes, in particular regarding extensive information obligations and individual enquiries of members. The distinction between occupational and personal pensions must remain a MS competence. Additional disclosure requirements regarding the Statement of Investment Policy Principles (Article 30) are at most appropriate for individual DC schemes and personal products. Hence adequate differentiation is necessary.
- The proposed **Article 18a on internal stress tests** for DB schemes should be deleted. In Germany, IORPs already use projections, stress tests and the ORA as risk management tools. The proposal again seeks to introduce Solvency II-like capital regulation for DB IORPs, which may be suitable for certain recently established insurance-backed IORPs (as happened e.g. in France) but not for German IORPs and their sponsoring undertakings, which have fulfilled pension promises even during prolonged low-interest periods.

If IORPs – in the interest of their stakeholders – should invest more in illiquid and riskier assets, greater flexibility in covering technical provisions, i.e. the proposed changes to Article 14 would be helpful. Transferring regulation for insurance companies selling consumer products , on the other hand, would not. A comparison of IORPs' and life insurance companies' asset allocations confirms this.

The proposed ban on additional national quantitative investment requirements for DB schemes (Article 19(6)), together with changes to Articles 17, 18 and 18a), does not contribute to expanding the investment capacities of IORPs. In line with the minimum harmonization approach, MS should remain able to apply quantitative restrictions on asset allocation not only to IORPs operating DC schemes.

- **Governance**: We continue to reject the requirement for a mandatory compliance function in IORPs (Article 21(4)). The proposed new proportionality principle, focusing only on the nature, scale and complexity of activities while disregarding size and internal organization, risks inappropriate regulation and aims apparently at consolidation / scaling up. The suggested amendments to the proportionality criteria will lead to unfitting regulation. The goal, however, should be an efficient organization of pension schemes.
- **Information requirements** should be tailored to the needs of members. Which information is relevant largely depends on the respective pension scheme. Given the diversity among schemes across MS, we do not see the value of a standardised EU format designed by EIOPA and aligned with PEPP requirements.
- Many Title IV requirements are suitable only for individual DC schemes and personal products, but not for DB and collective systems. This applies particularly to Article 41a on information in cases of "insufficient" performance. We do not see any reference values for DB systems. Hence, the proposed empowerment of EIOPA in Article 41a should not be pursued. Furthermore, the information to be provided during the pay-out phase has to fit the respective context.
- **Business conduct rules** (Articles 44a–44d): These proposed provisions appear to originate from financial market regulation aimed at protecting consumers from bad products. In our view, this approach does not fit collective occupational pension schemes, where social partners and sponsoring employers are key stakeholders, and it is particularly inappropriate for DB arrangements backed by a liable employer. The provisions proposed here should at least be limited to individual DC schemes, in which the individual member chooses the provider and the product and bears the risk alone.

3. Supervision and Reporting

- **We do not see any deficiency in the German NCA BaFin's current powers** to ensure compliance with regulatory requirements and therefore reject the extension of supervisory powers envisaged in the proposed Directive (Article 21 (10)). On the contrary, we are concerned that the proposal would encroach upon core competences of an IORP that have so far been exclusively vested in the IORP's management board and its stakeholders. In particular, the provisions governing the selection of members of the management or supervisory body (Article 21 (8) and (9)) as well as the requirements for cost breakdowns in the context of outsourcing (Article 31 (5)) do not contribute either to the creation of the SIU or to the reduction of administrative burdens. Moreover, the expansion of tasks and resources for supervisory authorities envisaged in Articles 45, 45a and 48 does not appear necessary from our perspective. We therefore strongly recommend carrying out a cost–benefit analysis, in particular against the background of the stated objective of reducing bureaucracy.

- A **regular supervisory dialogue** (Articles 49 (1b) and 49a) is useful, but frequency and content should not be prescribed at EU level. In particular, NCAs should not assume the tasks of IORPs and their stakeholders and/or ensure the scaling up desired by the European Commission.
- Article 50 provides for a **substantial expansion of EU-level reporting requirements** for IORPs. The European Commission is to be empowered to adopt implementing technical standards, based on drafts prepared by EIOPA, specifying procedures, formats and templates. Clearly, EIOPA is also seeking to enforce its Opinion on the supervisory reporting of costs and charges of IORPs of October 2021 across all MS. The German supervisory authority, however, deliberately decided not to implement this EIOPA Opinion following an examination of IORPs. The expansion of EU-level reporting envisaged by the European Commission would therefore run counter to the objective of reducing administrative burdens, particularly given that neither the European Commission nor EIOPA appears to have a genuine interest in reporting requirements that are proportionate and appropriate for IORPs. We therefore firmly reject this approach.
- **Supervision of outsourced functions and activities** (Article 50a) shall be limited to what is material and critical to an IORP.
- The idea of establishing a **public website by the national supervisory authority covering all occupational pension schemes** operated by IORPs (Article 51(4)) presumably originates from the area of private pensions, where a consumer chooses between providers and products and where a market overview may therefore be useful. This, however, is precisely not the case in occupational pensions. Why should information on a single-employer IORP, which exclusively provides occupational pensions for the sponsoring undertaking, be made publicly available? Given the diversity of schemes and the scope of information envisaged, we have serious doubts that this would result in a sensible tool.
- The **cooperation platforms** to be established (Article 55a) appear primarily to serve the objective of strengthening EIOPA. Since we are not aware of any problems related to the revised Budapest Protocol, we see no need for legislative action.

Conclusion

We point out that the implementation of the European Commission's proposal would retroactively deprive all German IORPs of the calculation basis of the pension promises they implement. Moreover, we believe that this would significantly jeopardise the willingness of employers to grant future pension promises via IORPs.

We believe that the current proposal to revise the IORP II Directive should be withdrawn. We call for a new revision proposal that adequately reflects the specific characteristics of occupational pension systems, ensures proportionate cost-benefit regulation for IORPs and serves the interests of occupational pension stakeholders.

Zusammenfassung

1. Relevanz für die Altersversorgung in Deutschland: In Deutschland haben rund 50% der Arbeitnehmer und 43% aller Betriebsstätten Betriebsrentenzusagen. Rentenpolitisch wird in Deutschland eine **Stärkung der betrieblichen Altersversorgung (bAV) angestrebt, die gegenüber der privaten Altersvorsorge viele Vorteile bietet**. Die bAV nutzt die **Vorteile großer Kollektive**:

- Ermöglichung der Absicherung biometrischer Risiken und einer effizienten und rentierlichen Kapitalanlage.
- Nutzung von Skaleneffekten.
- In vielen Altersversorgungseinrichtungen Beteiligung von Arbeitgeber- und Arbeitnehmervertretern an der Durchführung und Steuerung, wodurch Vertrauen gestiftet wird.

Versorgungsträger und die Rahmenbedingen des Alterssicherungssystems für die abzusichernden Arbeitnehmer werden von den Sozialpartnern oder den Arbeitgebern gewählt. Diese Rahmenbedingungen sorgen regelmäßig dafür, dass Belegschaften ganz oder zum großen Teil in das Alterssicherungssystem einbezogen werden. Die Geringverdienerförderung, die durch das zweite Betriebsrentenstärkungsgesetz verbessert wurde, unterstützt, dass auch Arbeitnehmer mit niedrigeren Einkommen eine bAV aufbauen. Die bAV unterscheidet sich also erheblich von der privaten Altersvorsorge, bei der der einzelne Verbraucher einen Anbieter wählt und ein Finanzprodukt kauft.

2. Die auf Jahrzehnte ausgerichteten Altersversorgungssysteme, die durch Einrichtungen der betrieblichen Altersversorgung (EbAV) organisiert werden, sollten ausgebaut und weiterentwickelt werden, ohne das große Vertrauen in die bAV in Deutschland zu zerstören. Die deutschen EbAV — Pensionskassen und Pensionsfonds – haben 10,5 Mio. Versorgungsberechtigte und knapp 1,4 Mio. Leistungsempfänger. Hinter diesen Altersversorgungssystemen stehen zehntausende Trägerunternehmen, die für die in den vergangenen Jahrzehnten gegebenen Betriebsrentenzusagen einstehen (DB). Zusätzlich sind infolge des Betriebsrentenstärkungsgesetzes inzwischen 30 Sozialpartnermodelle entstanden – kollektive DC-Modelle mit Einbindung der Sozialpartner in Durchführung und Steuerung dieser durch EbAV organisierten Altersversorgungssysteme**.**

Regulierung sollte immer mit einem vertretbaren Kosten-Nutzen-Verhältnis einhergehen. Im Sinne von „Better Regulation“ fordern wir eine **gesamtheitliche Folgenabschätzung** zum vorgeschlagenen EbAV-II-Review, und zwar unter Einbeziehung der betroffenen Mitgliedstaaten, hinsichtlich:

- Kostensteigerungen und finanzielle Folgen (Versorgungsempfänger, Leistungsberechtigte; Trägerunternehmen; Aufsichtsbehörden).
- Weitere Folgen für Altersversorgungssysteme (u.a. DB/DC; kollektiv/individuell; Rolle der Sozialpartner; Vertrauen in langfristige Systeme).
- Sozialpolitische Auswirkungen (Hinwendung der Arbeitgeber zu weniger bürokratischen Benefits ohne Versorgungsgedanken).

3. Der **Charakter der EbAV-II-Richtlinie** als aufsichtliche EU-Mindestharmonisierungs-RL für Altersversorgungseinrichtungen ist sinnvoll. Dieser Ansatz muss beibehalten werden, damit die Mitglieds-

staaten und die nationalen Aufsichtsbehörden bei der aufsichtlichen Regulierung dem in der bAV wichtigen nationalen Arbeits-, Sozial- und Steuerrecht Rechnung tragen können. Wir lehnen daher den Vorschlag der EU-Kommission ab, für EbAV über **delegierte Rechtsakte und EIOPA-Leitlinien** (Level-II- und III-Regulierungen) eine EU-Vollharmonisierung einzuführen. Diese nimmt den Mitgliedstaaten und nationalen Aufsichtsbehörden die Möglichkeit, die Vielfalt der EbAV und Altersversorgungssystemen angemessen zu regulieren. Ferner halten wir es nicht für angemessen, betriebliche Altersversorgungssysteme, v.a. wenn sie durch Sozialpartner und/oder Trägerunternehmen kollektiv ausgestaltet sind, wie individuelle Finanzprodukte zu regulieren. Wir sind besorgt, weil die EU-Kommission für die bAV und EbAV zentrale Erwägungsgründe der aktuellen EbAV-II-RL ignoriert hat (insbesondere EW 32, wonach EbAV einen sozialen Zweck verfolgen und daher nicht wie reine Finanzdienstleister zu behandeln sind; und: „Ihre soziale Funktion und die Dreiecksbeziehung zwischen dem Arbeitnehmer, dem Arbeitgeber und der EbAV sollten in angemessener Weise anerkannt und als grundlegende Prinzipien dieser Richtlinie gestärkt werden."; ferner EW 77 zur Weiterentwicklung von Solvabilitätsmodellen).

4. Zielsetzung der Richtlinienüberarbeitung: Die Zielsetzung der EU-Kommission durch viele zusätzliche Anforderungen, deren Umsetzung mit hohen Kosten eingehen würde und erhebliche Auswirkungen auf alle bAV-Stakeholder hätten, eine **Marktkonsolidierung** herbeizuführen (siehe auch vorgesehene Bewertung in Art. 62), können wir nicht nachvollziehen. Das geforderte „Scaling up" von EbAV ist äußerst komplex: Es geht regelmäßig um eine große Vielfalt an Versorgungszusagen, die i.d.R. Garantien umfassen. Ein Scaling up erfordert daher die Einbeziehung weiterer Rechtsgebiete und Stakeholder. Die EU-Kommission will aufsichtsrechtlichen Druck auf EbAV erzeugen, bietet aber weder eine Problemanalyse noch Lösungsmöglichkeiten.

Der Vorschlag der EU-Kommission zur Überarbeitung der EbAV II Richtlinie passt auch nicht zum allgemeinen Ziel der **Entbürokratisierung** („25%") und der angestrebten Entlastung v.a. von KMU sowie zu den Maßnahmen, die in den letzten Jahren für Banken und Versicherer und aktuell für das Pan-European-Pension-Product (PEPP) gewählt wurden.

5. Die meisten Vorschläge der EU-Kommission laufen den wichtigen politischen Zielen auf nationaler und europäischer Ebene zuwider: 1) Die Schaffung vieler neuer und v.a. auch unpassender Anforderungen an kollektive Altersversorgungssysteme werden **weder zum Ausbau bestehender Systeme noch zur Schaffung neuer beitragen**. 2) Da die meisten Vorschläge ohne erkennbaren Mehrwert zu steigenden Kosten führen, dürfte es auch kaum gelingen, **mehr Vorsorgekapital bei EbAV** anzusammeln; 3) Das Ziel **„mehr Performance bei EbAV"** ist zu unterstützen; doch durch die vorgeschlagene Angleichung an die Solvency-II-Regulierung der Versicherer bei DB-Systemen führt der Kommissionsvorschlag weg von kapitalmarktorientierten Anlagestrategien.

Wir fürchten, dass der EbAV-II-Überarbeitungsvorschlag v.a. dazu dient, der von der Generaldirektion FISMA und EIOPA offensichtlich favorisierten individuellen Altersvorsorge zum politischen Durchbruch zu verhelfen. Die PEPP-Verordnung vom Juli 2019 hat bis heute EU-weit zu zwei PEPP-Anbietern geführt. Für diese Verordnung sieht die EU-Kommission v.a. Deregulierungen und sogar einen Artikel zur steuerlichen Förderung vor.

6. Zuständigkeit der Mitgliedstaaten für Renten: Es ist Aufgabe der Mitgliedstaaten, die Rollen der einzelnen Säulen der Alterssicherung zu definieren. Zu den zentralen Fragen der kapitalgedeckten Alterssicherung zählen u.a.: kollektive/individuelle Ausgestaltung, Rolle der Sozialpartner und der Arbeitgeber, Altersversorgungseinrichtungen und andere Anbieter, Garantien (DB/hybrid/DC), Ausgestaltung der Auszahlphase, steuerlicher und sozialabgabenrechtlicher Rahmen … Diese Aufgabe geht deutlich über das Aufsichtsrecht hinaus, auch wenn es erheblichen Einfluss hat. Der vorliegende Vorschlag der EU-Kommission in Richtung einer EU-Vollharmonisierung für EbAV, der ohne Rücksicht auf den Bestand an Altersversorgungssystemen und ihre Stakeholder auf eine Zerstörung bestehender Strukturen hinausläuft, scheint v.a. im Interesse von EU-Behörden zu sein.

Die Zuständigkeit für digitale (säulenübergreifende) Renteninformationen (pension tracking systems) liegt bei den Mitgliedstaaten; durch die Überarbeitung der Aufsichtsrichtlinie EbAV-II, durch die „nur" EbAV reguliert werden, einen EU-Standard für die säulenübergreifende Renteninformationen der Mitgliedstaaten zu schaffen, lehnen wir ab.

Zu einzelnen Vorschlägen:

1. In einer EU-Mindestharmonisierung-RL passen u.a. folgende Regelungen überhaupt nicht und sind daher zu löschen:

- **Ermächtigungen von EU-Kommission zu delegierten Rechtsakten** und von **EIOPA zu technischen Durchführungsstandards sowie Leitlinien.**
- **Viele neue Aufgaben für Aufsichtsbehörden und massive Ausweitung an Berichtspflichten für EbAV, die einen signifikant höheren Bürokratieaufwand bedeuten würden** .
- **Systematische und regelmäßig undifferenzierte Übertragung der Versicherungsregulierung auf EbAV.**
- **Bestandsübertragungen im Inland (Art. 12a)**.

2. Den **Besonderheiten von EbAV und Altersversorgungssystemen** ist angemessen Rechnung zu tragen. EbAV sind keine Finanzdienstleister und Altersversorgungssysteme sind keine Finanzprodukte.

- Die EbAV II Richtlinie sollte sich auf betriebliche Altersversorgungssysteme beschränken. Die **Vermischung von Regelungen für betriebliche und private Altersvorsorge** sollte dringend vermieden werden. Sollte die Erweiterung der EbAV-II-Richtlinie um das Angebot individueller Altersvorsorgeprodukte jedoch beibehalten werden, sollte dies zu keinen zusätzlichen und für kollektive Altersversorgungssysteme unpassenden Anforderungen führen (v.a. detaillierte Info-Anforderungen und individuelle Abfragen von Versorgungsberechtigten). Die Unterscheidung zwischen betrieblicher Altersversorgung und individuellen Produkte muss in der alleinigen Zuständigkeit der Mitgliedsstaaten bleiben.
- Die zusätzlichen Anforderungen bei den zu veröffentlichenden Angaben zu den Grundsätzen der Anlagepolitik (Art. 30; SIPP) sind höchstens für individuelle DC Alterssicherungssysteme und private Produkte angemessen – hier müssen angemessene Differenzierungen erfolgen.

- **Neuer Art. 18a zu internen Stresstests** für DB Altersversorgungssysteme ist zu streichen: In Deutschland sind bei EbAV u.a. Prognoserechnungen, Stresstests und die ERB als Instrumente des Risikomanagements im Einsatz. Beim vorgeschlagenen Art. 18a geht es jedoch erneut – nach verschiedenen erfolglosen Versuchen – um eine SII-ähnliche Solvenzregulierung für DB EbAV. Die hier vorgeschlagene Regulierung mag für EbAV, die vor wenigen Jahren von französischen Versicherungsunternehmen gegründet wurden und die auch private Produkte anbieten, angemessen sein – nicht aber für deutsche EbAV bzw. deren Trägerunternehmen, die hinter den in Deutschland gegebenen Leistungszusagen stehen und in Zeiten der Niedrigzinsphase auch für ihre Erfüllung gesorgt haben.
- Sollen EbAV — auch im Interesse aller bAV-Stakeholder — mehr in illiquide und risikoreiche Anlagen investieren, dann hilft mehr Flexibilität bei der Bedeckung der versicherungstechnischen Rückstellungen bzw. die vorgeschlagene Änderung in Art. 14 – nicht aber die Regulierung von Versicherungsunternehmen, die einzelnen Verbrauchern Produkte verkaufen. Dies zeigt auch ein Blick in die Portfolien von EbAV und Lebensversicherern.
- Beim vorgeschlagenen Verbot für die Mitgliedstaaten, bei DB-Altersversorgungssystemen ergänzende quantitative Kapitalanlagevorgaben zu machen, (Art. 19 Abs. 6) geht es nicht um die Schaffung größerer Anlagemöglichkeiten für EbAV. Zusammen mit den Änderungen in Art. 17, 18, Art. 18a geht es um eine weder sinnvolle noch notwendige Übertragung der Versicherungsregulierung auf EbAV. Im Rahmen einer EU-Mindestharmonisierungs-RL sollten künftig nicht nur für DC-Systeme quantitative Kapitalanlagevorgaben möglich sein.
- **Governance-Anforderungen, u.a.:**
    - Die Anforderung, dass ein Unternehmensführungssystem bei einer EbAV eine Compliance-Funktion haben muss (Art. 21 Abs. 4) lehnen wir – auch basierend auf vielen Jahren Erfahrung – weiterhin ab.
    - Neues Proportionalitätsprinzip für EbAV: Für EbAV soll – im Rahmen von Scaling up – das Proportionalitätsprinzip der Versicherer eingeführt werden und damit künftig nur noch auf „der Art, des Umfangs und der Komplexität ihrer Tätigkeiten“ abgestellt werden (u.a. Art. 21 Abs. 1b). Das Ziel sollte jedoch eine effiziente Organisation von Altersversorgungssystemen sein. Der Verzicht auf „Größe oder Größenordnung sowie interne Organisation“ wird zu unangemessenen Regulierungen führen.
- **Informationsanforderungen**: Die Leistungs-/Renteninformation sollte die für den Versorgungsempfänger relevanten Informationen enthalten. Was relevante Informationen sind, hängt wesentlich vom Altersversorgungssystem ab, die Vielfalt hierzu in den Mitgliedstaaten ist groß. Warum daher ein von EIOPA entwickeltes EU-Format, bei dem eine weitgehende Angleichung an die PEPP-Regulierung anzustreben ist, hilfreich sein soll, ist für uns nicht nachvollziehbar.
    - Viele der in Titel IV vorgesehenen Anforderungen passen maximal für individuelle DC-Systeme und private Produkte – nicht aber für DB und kollektive Systeme. Dies gilt insbesondere für Art. 41a, der zur Information bei „unzureichender“ Wertentwicklung führen soll. Sinnvolle Referenzwerte für DB-Systeme sehen wir nicht. Hier muss zumindest

eine angemessene Differenzierung auf nationaler Ebene erfolgen (Streichung der vorgeschlagenen EIOPA-Ermächtigung in Art. 41a). Auch bei den geforderten Informationen in der Auszahlphase in Art. 43 muss die Information zur Art der Auszahlung passen.

- **Wohlverhaltensregeln** (Business Conduct Rules, Art. 44a bis 44d): Diese Regelungen scheinen aus der Finanzmarktregulierung zu kommen, die Verbraucher vor schlechten Produkten schützen wollen. Diese Welt passt u.E. nicht zu kollektiven Altersversorgungssystemen mit Sozialpartnern und Trägerunternehmen als wichtige Stakeholder und insbesondere nicht zu DB-Zusagen eines haftenden Arbeitgebers. Die hier vorgesehenen Regelungen sollten zumindest auf individuelle DC-Systeme beschränkt werden, in denen der einzelne Versorgungsberechtigte den Anbieter und das Produkt auswählt und allein das Risiko trägt.

3. Aufsicht:

- Ein Mangel an **Befugnissen der BaFin** zur Gewährleistung der Einhaltung von Regulierungsanforderungen ist für uns nicht erkennbar, die im RL-Vorschlag vorgesehene Ausweitung lehnen wir ab (Art. 21 Abs. 10). Vielmehr sehen wir mit Sorge, dass in zentrale Kompetenzen einer EbAV eingegriffen werden soll, die bisher ausschließlich dem Vorstand und seinen Stakeholdern vorbehalten waren. So sind die Vorgaben zur Auswahl der Mitglieder des Leitungs- oder Aufsichtsorgans (Art. 21 Abs. 8 und 9) und die Vorgaben für Kostenaufschlüsselungen bei Outsouring (Art. 31 Abs. 5) weder ein Beitrag zur SIU noch zum Bürokratieabbau. Der in Art. 45, 45a und 48 vorgesehene Ausbau an Aufgaben und Ressourcen für Aufsichtsbehörden ist u.E. nicht notwendig. Wir regen dringend eine Kosten-Nutzen-Analyse an, auch vor dem Hintergrund des angestrebten Bürokratieabbaus.

- Ein **regelmäßiger aufsichtlicher Dialog** (Art. 49 Abs. 1b und Art. 49a) mit den Einrichtungen ist sinnvoll, doch die Themen und Frequenz sollten nicht in der überarbeiteten EbAV-II Richtlinie vorgegeben werden. Insbesondere sollten die nationalen Aufsichtsbehörden nicht die Aufgaben der EbAV und ihrer Stakeholder übernehmen und/oder für das von der EU-Kommission angestrebte Scaling up sorgen.

- Art. 50 sieht eine **massive Ausweitung des EU-Berichtswesens für EbAV** vor. Der EU-Kommission soll die Befugnis übertragen werden, basierend auf EIOPA-Entwürfen technische Durchführungsstandards für die Verfahren, Formate und Vorlagen zu erlassen. Offensichtlich geht es hier EIOPA auch darum, ihr EbAV-Kostenberichtswesen (EIOPA Opinion vom Okt. 2021) in allen Mitgliedstaaten durchzusetzen. Die deutsche Aufsichtsbehörde BaFin hatte sich – nach einer Untersuchung bei den EbAV – bewusst gegen die Umsetzung dieser EIOPA-Stellungnahme entschieden. Die von der EU-Kommission angestrebte Ausweitung des EU-Berichtswesens wäre das Gegenteil von Bürokratieabbau, zumal weder EU-Kommission noch EIOPA ein Interesse an für EbAV angemessene Berichtsanforderungen haben. Wir lehnen dieses Vorgehen strikt ab.

- Die **Überwachung der von der EbAV ausgelagerten Funktionen und Tätigkeiten** (Art. 50a) muss sich darauf beschränken, was für die EbAV wichtig und kritisch ist.

- Die Idee der **Schaffung einer öffentlichen Website durch die nationale Aufsichtsbehörde zu allen von EbAV betriebenen Altersversorgungssystemen** (Art. 51 Abs. 4) stammt vermutlich aus dem Bereich der privaten Vorsorge, bei der ein Verbraucher einen Anbieter und ein Produkt

wählt, und daher ein Marktüberblick hilfreich sein kann. Dies ist aber in der bAV gerade nicht der Fall. Warum sollten Angaben einer Unternehmens-EbAV, die nur für die Altersversorgung des Trägerunternehmens sorgt, veröffentlicht werden? Angesichts der Vielfalt der Systeme und der hier vorgesehenen Angaben haben wir höchste Zweifel, dass so ein sinnvolles und nutzbares Tool entsteht.

- Die zu schaffenden **Kooperationsplattformen** (Art. 55a) scheinen v.a. der angestrebten Stärkung von EIOPA zu dienen. Da uns keine Probleme im Zusammenhang mit dem revidierten Budapester Protokoll bekannt sind, sehen wir keinen Handlungsbedarf des Gesetzgebers.

Schlussfolgerungen:

Wir müssen auf die Tatsache hinweisen, dass die Umsetzung des RL-Vorschlags allen EbAV in Deutschland nachträglich die Kalkulationsgrundlage für die verantworteten Betriebsrentenzusagen entziehen würde. Wir sind darüber hinaus überzeugt, dass dadurch auch die Bereitschaft zur Erteilung künftiger Versorgungszusagen über EbAV signifikant gefährdet wird.

Wir sind daher der Auffassung, dass der vorliegende Überarbeitungsvorschlag der EbAV II Richtlinie zurückgezogen werden sollte. Die aba bittet um einen neuen Überarbeitungsvorschlag, der den Besonderheiten der betrieblichen Altersversorgung Rechnung trägt und zu einer angemessenen Kosten-Nutzen-Regulierung für EbAV führt und im Interesse der bAV-Stakeholder ist.

1 General remarks: Most of the European Commission's proposals run counter major policy objectives

aba welcomes the European Commission's objective of strengthening supplementary funded pensions in the EU. However, the proposed revision of the IORP II Directive has the potential to undermine occupational pensions, with corresponding adverse effects not only on the objectives associated with the Savings and Investments Union (SIU), but also on social policy. To be specific, the proposal runs counter to three major policy objectives:

- **Broader coverage of occupational pension provision**, e.g. through the creation of new schemes for employee groups that have so far been insufficiently covered (particularly low-income-earners and employees in SMEs).
    - The massive expansion of regulatory requirements under IORP II and the associated costs have a strong deterrent effect on employers and social partners, as their interests/role are disregarded. As a response, they might increasingly offer other benefits outside occupational pensions for their new employees.
- **More assets / capital managed by IORPs**
    - Most of the European Commission's proposals lead to higher costs – and this without any identifiable added value. Most of the suggested amendments are tailored towards individual DC schemes, whereas in many Member States (MS), occupational pensions are collective in nature and – at least in some MS such as e.g. Germany – generally still contain guarantees.
- **Better Performance**
    - A comparison of the portfolios of IORPs and insurance undertakings shows that Solvency II alignment will not lead to an asset allocation leaning heavier towards (private) equity and venture capital. Furthermore, the proposed focus on performance is pursued at the expense of biometric risk coverage, which is a core feature of occupational pension schemes in many MS (IORPs provide pensions and are not savings vehicles).

A. The character of the IORP II Directive as EU minimum harmonization with a central role for MS and NCA is crucial and must be preserved! We reject the EU Commission's proposal for extensive EU prudential harmonization involving level II and III regulations and treating occupational pension schemes as individual financial products.

In many MS there are no IORPs and there is considerable **heterogeneity among MS with IORPs**. There must remain **scope for national labour and social law legislation.** The proposed level II (delegated acts) and level III regulations (EIOPA guidelines) are not compatible with this.

- We still support Recital 32 of IORP II: „*IORPs are pension institutions with a social purpose that provide financial services. They are responsible for the provision of occupational retirement benefits and should therefore meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such*

institutions should not be treated as purely financial service providers. Their social function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged and supported as guiding principles of this Directive.“

- Various proposed amendments to the IORP II Directive assume that a retail customer chooses a provider and purchases a product on an individual basis. With these measures, most of which originate from other EU directives, the European Commission aims to further develop the IORP II Directive into an EU financial markets directive.

In its proposal, the European Commission assumes the existence of individual DC schemes or even aims for them. It thus largely refrains from distinguishing between DB and DC schemes, which – without the necessary leeway for MS in implementation – leads to **inappropriate regulation for DB schemes and collective pension schemes**. This affects Germany to a significant extent.

To avoid inappropriate regulation, in particular for German IORPs offering DB/hybrid schemes and collective schemes:

1. Keep the **EU minimum harmonization approach:**

- **No implementation of competences for the EU commission to adopt delegated acts (Article 64a) in relation to multiple topics**:
    - Art. 17 (7) (Art. 17 and Art. 18 for numbers and percentage values of the required solvency margin) and
    - Art. 38 (6) (format and structure of the Pension Benefit Statement; information referred to in Articles 38 to 40).
- **No implementing technical standards by EIOPA:**
    - Art. 50 (g): on the procedures, formats and templates for the reporting to NCAs.
- **No EIOPA guidelines for IORPs**[1]: We reject any EIOPA guidelines for IORPs. The proposed Article 10(3), which grants EIOPA the competence to issue guidelines on the prudential assessment to be carried out as part of the authorisation of IORPs, as well as on quantitative requirements (Art. 13 - 19) and on conditions governing activities (Art. 20 – 35) must be deleted. The same applies for

[1] In detail: Article 16 of the EIOPA Regulation provides that EIOPA may issue guidelines in order to establish “consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law”. However, such guidelines must remain within the scope of the powers conferred by the respective legislative acts. As the current IORP II Directive is an EU minimum harmonisation directive, EIOPA does not currently have such powers in respect of IORPs. With regard to IORPs, EIOPA currently only has the instrument of “opinions” under Article 29(1a), which are addressed exclusively to national competent authorities (NCAs) and leave them significantly more discretion in implementation than guidelines (which follow a “comply or explain” approach). Consequently, at present there are “only” EIOPA opinions based on the IORP II Directive (see EIOPA website).

Article 36 (4), concerning information in accordance with Articles 41, 42 and 43, and Article 41a determining underperformance across MS.

The European Commission's proposal provides – in addition to the empowerments for delegated acts – for broad empowerments for EIOPA to issue guidelines. In our view, these empowerments should be seen as concrete mandates and ultimately aim at full harmonisation of IORP regulation at EU level, an alignment of IORP regulation with the insurance framework, and, implicitly, at the consolidation of the IORP market. Given the significant diversity of occupational pension systems across MS – in particular due to differences in labour, social and tax law – the proposed empowerment of EIOPA risks leading to a substantial increase in (often unsuitable) regulatory requirements for IORPs and, considering that there are only 27 cross-border IORPs, to a considerable expansion of administrative burden. A concrete example of this is the undifferentiated inclusion of IORPs in the scope of the DORA Regulation, which, together with its Level II and Level III measures, templates and implementation guidelines, has resulted in a regulatory framework exceeding 1,000 pages for IORPs.

- **Avoid mixing regulation for occupational and personal pensions**: The second and third pillars of retirement provision often fulfil different functions within the respective national pension systems and are frequently subject to different national requirements. For example, labour law is regularly relevant for occupational pensions, but not for personal pension products. Against this background, aba firmly opposes the inclusion of third pillar products distributed by IORPs (which is not even legally possible in many MS) within the scope of the IORP II Directive.

  ➢ aba therefore calls for the deletion of Article 6 (21) from the Commission proposal and for the removal of references to personal pension products from Articles 7, 13, 16, 36, 47, 50 and 51.

  Should this approach not be politically achievable, we advocate that, in the aforementioned provisions, MS must remain free to decide whether or not to apply the respective rules to third-pillar products distributed by IORPs.

2. **Respect the specific characteristics of IORPs and of the pension schemes they implement:** Occupational pension schemes are not individual financial products: Collective pension schemes must not be burdened with costly regulations designed to address problems associated with individual financial products. Therefore, the central role of the social partners in occupational pensions and the interaction between sponsoring undertakings, beneficiaries and IORPs must be given due consideration. The future directive should make appropriate distinctions between DB and DC schemes in the requirements or allow MS the required flexibility.

B. Inappropriate requirements and reformulation of the proportionality criteria – Efficient organization of occupational pension schemes instead of scaling up through EU legislation

The Commission's review proposal is seen as an existential threat by German IORPs. Massive increases of inappropriate EU requirements and reduced proportionality make it difficult to set up new IORPs and to organize existing pension schemes efficiently, in particular in contexts such as in Germany, where IORPs are rather established at company-level (and not at industry-level). It also does not lead to higher yields

and therefore ultimately pensions, as disproportionate regulatory requirements increase costs for IORPs. The additional complexity may instead lead employers to refrain from offering occupational pension schemes to their employees in the future and to turn to less bureaucratic benefits instead. The proposed reduction of proportionality is therefore counterproductive not only from a social policy perspective, but also with regard to the goals associated with the SIU. This is somewhat ironic, as due to their specific characteristics (e.g. investment horizon spanning over several decades, no lapse risk), IORPs are ideal investors from a SIU perspective.

It is very important for us that the **criteria "size" and "internal organization"** for the proportional application of the IORP II Directive are maintained. With the proposed new (reduced) criteria "nature, scale and complexity of the activities of the IORP", the European Commission proposes to transfer the proportionality principle of insurers (consolidated version of Solvency II) to the IORP II Directive. However, the experience of recent years with the proportionality principle as it is currently enshrined in the IORP II does not indicate any need for change. On the contrary, since implementing the IORP II Directive into national regulation in Germany, the reference to these criteria has proven its worth and should thus not be removed. Many IORPs in Germany are operated on a non-profit base by social partners or are set up by their sponsoring companies.

- Size of the pension scheme: Requirements that mainly increase fixed costs disproportionately affect small IORPs. For these IORPs, the removal of "size" as a criterion would therefore represent a serious obstacle for these IORPs to fulfill their task of providing adequate pensions. In smaller IORPs, the regulatory costs are distributed disproportionately among members and beneficiaries. At the same time, these institutions do not play a significant role in financial stability.
- Size and internal organization of the IORP: Members and beneficiaries are typically represented in the management and/or supervisory bodies of IORPs, thereby guaranteeing that the institution acts in their best interest. Proportionality measures no longer being applied to these IORPs would consequently not change their business practices, but only lead to additional administrative burdens, which increase costs and ultimately reduce the pensions that are paid.

To us, it seems like the proposed restriction of the proportionality criteria is part of a package of measures with which the European Commission intends to push smaller IORPs toward consolidation, as it believes that only large institutions are capable of making the investments it wants to promote under the SIU and of operating cost-efficiently.

In this context, we point out that the **size of a pension fund** is indeed a factor contributing to its investment capacity, but it is certainly not the only one. Smaller IORPs may be obstructed to invest in certain asset classes due to internal lacking competences, but they can and do compensate such scale effects through the selection of good service providers (outsourcing) or their investment strategy – e.g. German IORPs often invest primarily via AIF ("Spezialfonds"), which have the required scale to build a very broadly diversified portfolio. Furthermore, IORPs may fall back on the competences of their sponsoring undertaking(s) regarding the handling of certain asset classes. As regards costs, EIOPA's Costs and Past Performance Report shows that in the majority of MS, IORPs have an expense ratio of well below 1%. This indicates that also smaller IORPs are operating cost-efficiently. They and therefore their members profit from less internal administration and enhanced internal collaboration. Hence, smaller IORPs which have developed techniques to operate efficiently must not be driven towards consolidation out of a simplified

logic that ignores other factors than size. The evidence that large IORPs outperform smaller ones is limited at best.

Furthermore, many **IORPs are established by social partners or employers** and consequently, can take special characteristics of certain sectors or sponsoring undertakings into account, i.e. by having employee and employer representatives in their committees. Their specific governance model would be endangered by an external push for consolidation and could lead to decreasing support of sponsoring undertakings. We also point out that increasing the size of pension funds might also have detrimental effects, such as e.g. increasing the danger of political interference which might produce suboptimal outcomes. Furthermore, a landscape with only a handful of very large consolidated IORPs could in adverse scenarios lead to **too big to fail-situations** (known from the banking sector), which can end up very costly for the respective MS.

- For these reasons, we strongly oppose any initiatives which aim at forcing smaller IORPs to consolidate through increasing regulatory requirements. Based also on our experience with the IORP II principle of proportionality, we reject transferring the Solvency II principle of proportionality to IORPs.

2 Title I: General provisions

2.1 Article 4 & Recital 4: Optional Extension of Scope – not needed in an EU minimum harmonisation directive

The proposed revision contains an option for MS to apply parts or all provisions of the directive to institutions providing retirement benefits and operating on a funded basis which are outside its mandatory scope.[2] We are somewhat puzzled by this proposal, as already now, it is up to the MS' discretion to apply the IORP II Directive to institutions that are outside of its mandatory scope.

This amendment to the revised IORP II is only necessary if the future directive is to be a full EU harmonisation financial service directive which, amongst other things, no longer allows for national labour, social and tax law to be taken into account. In line with the principle of subsidiarity, we reject this.

If this option is intended to serve as a political tool for "nudging" MS into bringing additional entities under the IORP II framework, we wonder which MS would make use of such an option under this proposed directive, which aims to scale up through additional supervisory requirements.

We feel that the suggested reformulation of Article 4 is primarily driven by the European Commission's desire to mobilize more capital for the needs of the SIU. We stress emphatically that pension funds and the occupational pensions they provide exist to supply members with a supplementary old-age income

[2] We would like to draw attention to the following expectation of the European Commission regarding the implementation of the revised directive: *"Its application ... should be implemented in a manner that recognises the full spectrum of existing occupational pension provision."* (Recital 10)

which helps them retain their standard of living and to avoid old-age poverty. This primarily social function must not be thwarted in order to achieve other political objectives.

This option right concerns i.a. institutions "that are excluded from the scope of this Directive pursuant to Article 2(2), points (a) and (d). These are institutions operating social security schemes and institutions where employees of the sponsoring undertaking have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits"; from a German perspective, these are "berufsständische Versorgungswerke" and "Unterstützungskassen".

Under German occupational pension law, occupational pension promises organised through Unterstützungskassen (only DB schemes) are protected by the employer and, in the event of the employer's insolvency, by statutory insolvency insurance. Inclusion in the revised IORP II Directive, which would entail significant costs, is neither necessary from the state's perspective nor in the interests of occupational pension stakeholders.

- For these reasons, aba is in favour of deleting the proposed amendments to Article 4. If the IORP II Directive retains its character as an EU minimum harmonisation directive, each MS will still have the right to apply the Directive, in whole or in part, to institutions outside its scope.

2.2 Article 6 (3): Inclusion of "professional association or body" in the definition of "sponsoring undertaking" – no mixing of different roles

The proposed amendment to Article 6(3) of the IORP II Directive, which seeks to include a "professional association or body" within the definition of a "sponsoring undertaking", raises fundamental concerns as to the very nature of occupational pension provision. Occupational pensions are inherently characterised by a specific triangular relationship between the employee (member / beneficiary), the employer (sponsoring undertaking) and the institution implementing the pension promise (e.g. an IORP). This tripartite structure is not incidental but constitutive for occupational pensions in Germany. In this relationship, the sponsoring undertaking's role goes far beyond being merely an initiator or contributor of the employee's pension plan.

It is intrinsically linked to the employment relationship and forms the legal and economic basis for the pension promise made to employees. In Germany, hybrid and DB schemes will prevail for the foreseeable future and employers remain ultimately liable for the fulfillment of a pension promise, also if an IORP is interposed.

There is, on the other hand, typically no employment relationship between a professional association or body and its members. Professional associations and bodies are consequently structurally and legally unable to duplicate the role of a sponsoring undertaking in the occupational pension triangle, at least in the German context. Consequently, it cannot fulfil the core functions traditionally and legally attributed to a sponsoring undertaking in the sense of occupational pension law. Extending the definition of "sponsoring undertaking" to professional associations therefore risks diluting the concept of occupational pensions and blurring the established distinction between occupational and other pension arrangements.

- aba advocates in favor of leaving Article 6 (3) unchanged.

2.3 Article 6 (21): Definition of "personal pension product" – don't mix regulation for occupational pension schemes and personal pension products

As argued in the general remarks, the second and third pillars of retirement provision fulfil distinct functions within national pension systems and are typically subject to different legal and regulatory frameworks. In particular, occupational pension schemes are regularly embedded in labour law contexts, which is generally not the case for personal pension products.

Against this background, aba strongly opposes any extension of the scope of the IORP II Directive to include third pillar products distributed by IORPs (which is not even possible in many MS). This approach disregards the fundamental structural differences between (collective) occupational schemes and individual pension products. Furthermore, by referring to the PEPP Regulation (which is also in the process of being reviewed), the European Commission opts for a very broad definition of "personal pension product", which, at least in the German context, could include even occupational pensions in certain contexts (e.g. if former employees continue paying contributions to the occupational pension scheme of a former employer).

- aba calls for the deletion of the proposed Article 6 (21).
- If this is politically not feasible, we propose that Article 6 (21) is formulated as follows:

  "'personal pension product' means a personal pension product as defined in Article 2, point (1), of Regulation (EU) 2019/1238 of the European Parliament and of the Council, provided that the product in question has been initially approved by the respective NCA as a personal pension product."

2.4 Article 7: Activities of an IORP – National differences in the delineation between second and third pillar must be respected

The amendment to Article 7 requires the ring-fencing of assets and liabilities for personal pension products. This is justified in cases where IORPs offer these products on the market and are therefore in competition with other providers. Otherwise, this requirement runs counter to the efficient organisation of supplementary pension provision (particularly with regard to investment).

We would like to point out that the European Commission has proposed a very broad definition of personal pension products in Article 6 (21) ("*personal pension product as defined in Article 2, point (1), of Regulation (EU) 2019/1238 …*"; see general remarks and 2.3). The distinction between occupational and personal pension products should be the sole responsibility of the MS. The political and technical debate surrounding this distinction in the context of the FIDA Regulation has shown that it raises many questions and is anything but straightforward.

2.5 Article 9a: Multi-sponsor IORPs – Role of social partners and sponsoring undertakings should be acknowledged

The proposal for Article 9a introduces the term "multi-sponsor IORP" into the Directive for the first time, referring to institutions that operate multiple pension schemes (for multiple employers) at the same time.

We see no need for this article, which **ignores the relevance of national social and labour law relevant to occupational pension schemes**, i.e. ignoring the role of social partners and sponsoring undertakings.

First, there is no reason to introduce special rules for multi-sponsor IORPs into the directive. Second, the new provision also incorporates the possible application of the Solvency II regime for such institutions as a MS option. As described above, the application of the Solvency II requirements is not appropriate for IORPs – multi-sponsor IORPs are no exception to this. Furthermore, this topic is already adequately addressed in the new recital 15, which clarifies that IORPs may operate different pension schemes in parallel, including schemes with different investment rules/policies.

- Article 9a should therefore be deleted without replacement.

2.6 Articles 11 and 12: Cross-border activities and procedures and cross-border transfers – Recognize the reasons for the limited cross-border activity of IORPs

According to the latest EIOPA report on cross-border IORPs from December 2025, there are just 27 IORPs operating across borders. The reasons for this very limited number include the fact that occupational pensions are deeply rooted in national labour, tax and social security law – areas of law that are not harmonised across the EU. Key competences in this area lie with the MS. Furthermore, occupational pensions regularly supplement statutory schemes, meaning that the requirements for supplementary pension provision vary greatly across MS. And even multinational companies often have no interest in IORPs operating across the EU.

The changes now envisaged in the Commission proposal, including those relating to cross-border activities and transfers, are therefore unlikely to lead to a boom or the further development of the internal market for occupational pensions. Should the objectives of the IORP II Directive not rather be revised? In any case, the small number of cross-border IORPs does not justify EU-wide uniform standards for all IORPs.

We do not see any added value in the amendments proposed in Article 11, including those aimed at greater involvement of EIOPA, and the new Article 11a.

The background and the need for the new Article 8a (Right of establishment and freedom to provide services) is unclear to us. Why would an extra/new regulation be necessary for cross-border services in relation to Articles 11 and 11a?

Regarding the proposed amendments to **Article 12(2a) and (3)** whereby the approval for cross-border transfers no longer relies on the definition of 'majority' under national labour law, we assume that a majority of representatives will – "where applicable" – continue to be sufficient in future – despite the new provision stating "*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*".

- MS must continue to be able to allow decisions to be taken by representatives of members and beneficiaries (rather than asking all members and beneficiaries).

2.7 Article 12a: Domestic Transfers – to be deleted without replacement

The introduction of Article 12a seeks to regulate domestic transfers and tie them to principles already applicable to cross-border transfers. aba strongly supports the EU minimum harmonisation approach of IORP II and the principles of subsidiarity and therefore opposes any EU-level regulation of purely national transfers. As indicated by the term itself, national transfers represent transfers within the same legal space (in the German context, labour law is particularly relevant regarding domestic transfers). Transfers to a different legal space, i.e. cross-border transfers, are fundamentally different to this. Different requirements for both are hence justifiable. On the contrary, we hold that streamlining regulation for national and cross-border transfers would imply an unjustified and forced equal treatment of unequal issues.

Given Germany's already strict transfer regime, further procedural rules could create additional administrative burdens without corresponding benefits.

We note that the proposed Article 12a does not include the 'sponsoring undertakings' which, particularly in the case of DB systems, may be liable.

- aba strongly supports the EU minimum harmonisation approach of IORP II and calls for deletion of Article 12a. MS shall retain complete autonomy over national transfer requirements.

3 Title II Quantitative Requirements

3.1 Article 14: Temporary Underfunding of technical provisions – more investment opportunities for IORPs operating DB schemes, particularly for investments in illiquid asset classes which is in the interests of all occupational pension stakeholders

The proposed amendment of Art. 14 (2), which aims at facilitating temporarily insufficient funding of technical provisions (subject to a maximum recovery period of ten years), is an appropriate and welcome improvement. This aligns with the long-term nature of occupational pensions and supports investment in alternative assets.

- Recent German legislative developments: The Second Occupational Pension Strengthening Act ("Zweites Betriebsrentenstärkungsgesetz") amended, amongst other things, the regulations for Pensionskassen in Germany, thereby allowing for a temporary underfunding under certain conditions. Regulations regarding temporary underfunding had already been in place for Pensionsfonds prior to this.

3.2 Articles 17 and 18: Required Solvency Margin – no delegated acts by the EU Commission

The empowerment of the Commission to adjust numerical solvency values by delegated acts is fundamentally inconsistent with a minimum harmonisation framework (Article 64a and Article 17 (7)). Solvency requirements for IORPs differ structurally from those of insurers and must remain stable, predictable, and firmly rooted in primary legislation.

- aba emphasises the EU's minimum harmonisation approach of the IORP II Directive and strongly rejects any delegated act by the EU Commission.

- In particular, aba rejects any move towards dynamic, frequently adjustable capital requirements. If adjustments to well-established rules are deemed necessary, they must be made through full co-legislation — not delegated acts.

➢ We suggest deleting the proposed Art. 17 (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."*~~

➢ Given that IORPs play a role only in a limited number of MS and that the trend is moving away from DB to DC schemes, and in light of the major reform in the Netherlands, we suggest examining for which Member States and IORPs these proposed requirements are still relevant at all. If only a few MS – including Germany – are affected, we see no need for EU-wide regulations for IORPs that do not operate across borders.

3.3 Article 18a: Internal Stress Testings – no SII like solvency regulation for DB IORPs through the backdoor

Under the new Article 18a of the Commission's proposal, the NCA must require IORPs organising DB schemes to carry out a stress test at least every three years, unless Solvency II-(style) risk-based solvency requirements are applied. The proposal sets out stress scenarios, which may be made more stringent by the national supervisory authority through the use of stricter assumptions or longer projection horizons. If the IORP fails this stress test, it must submit a convergence plan setting out corrective measures; and if this is not sufficiently credible, the NCA should be empowered to impose higher solvency capital requirements.

- We would like to draw attention to Recital 77 of the current IORP II Directive: "*The further development at Union level of solvency models, such as the holistic balance sheet (HBS), is not realistic in practical terms and not effective in terms of costs and benefits, particularly given the diversity of IORPs within and across Member States. No quantitative capital requirements, such as Solvency II or HBS models derived therefrom, should therefore be developed at the Union level with regard to IORPs, as they could potentially decrease the willingness of employers to provide occupational pension schemes.*"

  This recital was the result of years of technical and political debate. For over 15 years, the European Commission and EIOPA have been working to extend the solvency requirements of insurers to IORPs. We continue to firmly oppose these attempts, in the interests of all occupational pension stakeholders. The technical and political arguments put forward at the time remain valid, and the experience of recent years -- including the long period of low interest rates – has not indicated any need for change.

- The proposal in Article 18a, in conjunction with the amendments to Articles 17, 18 and 19, appears to be consistent with the plans[3] of the European Commission set out in the „White Paper An Agenda for Adequate, Safe and Sustainable Pensions“ of February 2012 and the long-standing call by the EU supervisory authority EIOPA to introduce a common framework or holistic balance sheet approach for IORPs, thereby aligning their regulation with that of insurers.

  In this context, we would also draw attention to the proposed authorisation of EIOPA to issue **guidelines** on the quantitative requirements (Title II: Articles 13–19) in Article 10(3).

- This is highly relevant for German IORPs, for the following reasons:

  - Germany is, and will remain for decades to come, a MS in which defined benefit (DB) schemes are of great importance to occupational pension stakeholders. Social partner models (collective DC schemes), the framework for which was established by the First Occupational Pension Strengthening Act in 2018 and further developed by the Second Occupational Pension Strengthening Act in 2026, (still) play a comparatively minor role in Germany.

  - EIOPA and BaFin already use the following tools for German IORPs: the EIOPA stress test, the ORA (ERB) (in accordance with the BaFin circular), the BaFin stress test for Pensionskassen, and BaFin projection calculations (“Prognoserechnungen”). We do not see the need for a further stress test – on the contrary: what needs to be reviewed is the number and design of the current instruments.

    Under the current legal framework in Germany, the consequence for an IORP that does not pass the national NCA‘s (BaFin in Germany) stress test is that it has to inform its supervisory board accordingly. In such instances, BaFin may, of course, approach the IORP and, for example, request a less risky investment strategy or other measures. This system, in which there is no automatic mechanism that would trigger the establishment of a convergence plan or a comparable instrument, has proven its worth and should not be amended by an EU legal act.

➢ aba clearly rejects the proposed Article 18a and calls for its deletion. Stress tests must remain a supervisory tool carried out with proportionality, not a rigid statutory requirement. The proposed regime increases administrative costs, conflicts with national risk frameworks, and is incompatible with collective systems where risks are shared with sponsoring employers.

[3] *„The Commission will, in 2012, present a legislative proposal to review the IORP directive. The aim of the review is to maintain a level playing field with Solvency II and promote more cross-border activity in this field and to help improve overall pension provision in the EU. This will help address the challenges of demographic ageing and public debt.“*

3.4 Article 19: Investment rules - Proposed changes are the opposite of liberalization for DB systems

Both in spirit and in wording, the requirement stipulated in the proposed Article 19 is fundamentally tailored to individual DC schemes and personal pension products. It fails entirely to take into account the collective nature of the investment strategies of many IORPs, as well as the representative structures through which employers and employees are integrated into the IORPs' decision-making processes.

- Article 19 (1): The previous term "**prudent person rule**" in the IORP II Directive shall be replaced by the term "prudent person principle" from insurance regulation (Art. 132 of the Solvency II Directive), which is accompanied by extensive supplementary EU regulation.This amendment appears to be consistent with the other proposed amendments regarding quantitative requirements (specifically Articles 17, 18, and 18a), which aim to align IORPs with defined benefit pension schemes with Solvency II.

- The proposed sustainability requirements in Article 19 (1b) appear to align neither with the amended Corporate Sustainability Reporting Directive nor with the proposed amendments to the Sustainable Finance Disclosure Regulation.

  - ➢ We strictly reject these proposed sustainability requirements -- characterized in part by an unclear profile of requirements and significant practical implementation challenges.

- Article 19 (new 1b) - requirement "*that assets held to cover the technical provisions are also invested in a manner appropriate to the nature and duration of the liabilities entered into by the IORP*".

  If this refers to **ALM studies** providing a comprehensive analysis that assesses the relationship between the pension fund's assets and liabilities, and which are part of risk management, we agree. The specific details should be developed at the national level, in line with existing pension schemes.

  To avoid misunderstandings: A uniform methodological approach to the valuation of assets and liabilities for IORPs would not be appropriate. Such an approach would also run counter to the objective of increasing investments in private assets - such as private equity, venture capital, and growth equity funds. Fixed rules for duration matching would force IORPs to invest in certain fixed income instruments (see experiences with Solvency II). Furthermore, it would hinder investments into productive capital and potentially increase liquidity risks (as seen in the UK).

  - ➢ We therefore believe that the current investment rules in the IORP Directive ("Prudent Person Rule" and the fiduciary duty), together with the possibility for MS to impose supplementary quantitative requirements, are sufficient and appropriate and enable adequate diversification of IORP portfolios.

- Article 19 (new 1c): Investment decisions by IORPs must reflect the **sustainability preferences of members and beneficiaries** *("... where IORPs are able to gauge those membership preferences and to the extent those preferences are consistent with the investment principles set out in paragraph 1.")*.

In many IORPs, the interests of members and beneficiaries are taken into account by their representatives in decision-making bodies of the IORPs. This also applies to the integration of sustainability aspects into investment strategies. This collective and representative approach must be recognized.

The integration and consideration of "individual" preferences should be implemented only in the context of pension schemes and products where individuals decide on investment strategies. In the case of collective systems, (costly) surveys of individual members should not be mandatory.

- We therefore propose to add:

  „(...) where IORPs are able to gauge those membership preferences and to the extent those preferences are consistent with the investment principles set out in paragraph 1. For IORPs with representative governing bodies there is no requrement to assess the sustainblity preferences on members and beneficaries on an individual level."

- Article 19 (new 1d): This appears to be a copy of MiFID II that completely ignores who bears the risks (e.g. *Bedarfsdeckungskassen* in Germany). Such requirements are incompatible with collective pension schemes.

- Article 19 (6) – more detailed rules only for DC IOPRs – no longer for DB: A comparison of the portfolios of German pension funds and life insurers does not support the EU Commission's "liberalization thesis" regarding the proposed Article 19. Even analyses conducted by EIOPA reveal no correlation between national limits and a lower allocation to alternative investments.[4] Consequently—and in EIOPA's view—national limits (as in der German Anlageverordnung), do not hinder the allocation of capital to alternative assets.

  - The prohibition for MS envisaged by the EU Commission for DB schemes neither results in an investment regulatory framework that grants IORPs greater freedom and opportunities in their investment activities, nor does it align with the EU's minimum harmonization approach for IORPs.

  - The right of the MS to lay down more detailed rules should be preserved for all pension systems.

  - We suggest phrasing Art. 19 (6) in a way that it differentiates between schemes where the investment risk is fully borne by the members and beneficiaries on the one hand and schemes where this is not the case, e.g. as follows:

  "(6) In accordance with the provisions of paragraphs 1 to 5, Member States may decide or empower the competent authority, for IORPs authorised in their territories, to lay down more detailed rules, provided they are prudentially justified.

[4] *EIOPA-BoS-25-421-Statistical annex on IORPs data*; *EIOPA-BoS-25-421-Annex quantitative investment limits 09/2025*, page 1

~~*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:*~~ *For pension schemes* ***where the investment risk is borne by the members and the beneficiaries,*** *such national rules shall not prevent IORPs from:*

(a) investing up to 70 % 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 in instruments that have a long-term investment horizon and are not traded on re gulated 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, Eu ropean Social Entrepreneurship Funds and European Venture Capital Funds.';

For pension schemes where the IORPs bear the investment risk and themselves provide for a guarantee, such national rules shall IORPs not prevent from:

(a) Investing up to ***35%*** *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 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."

4 Title III Conditions governing activities

Title III (Conditions governing activities) introduces many new requirements for IORPs, the necessity and added value of which are, at least as far as German IORPs are concerned, not apparent. Before the last revision of the IORP Directive, the European Commission involved IORPs in a **cost-benefit analysis.** This should generally be part of good legislation.

We cannot see how the proposed additional requirements for IORPs, which would result in significant implementation costs and higher running costs, are intended to lead to more and higher occupational

pensions. We reject the European Commission's 'scaling up' strategy for IORPs. The potential impact of this strategy on existing pension schemes, as well as on members, beneficiaries and on the sponsoring undertakings, cannot be ignored.

Additional requirements should be limited to those IORPs and MS where there is a genuine need for them. Anything else amounts to bureaucracy – and runs counter to the broader objective of reducing bureaucratic requirements and, above all, easing the burden on occupational pensions. Given the diverse roles and set-ups of IORPs, we consider it essential to grant **MS and NCAs sufficient discretion in implementing the Directive**.

- The **provision in Article 10 (3) empowering EIOPA to issue guidelines**, inter alia, on the requirements set out in Title III, should therefore be deleted.

4.1 Article 21 (1(b)): General governance requirements – conflicts of interest and internal reviews taking into account not only the downscaled criteria "nature, scale and complexity of the risks inherent in the activities of the IORP"

Article 21(1b) requires an effective system for managing conflicts of interest. Unlike many financial service providers, the interests of the different stakeholders involved in IORPs are often aligned: in the case of German IORPs, for example, the members are often the owners of the IORP (mutual insurance or pension funds). This alignment of interests between sponsoring undertakings and IORPs is particularly evident in the DB pension schemes prevalent in Germany, where the employer is liable for the promised benefits. Uniform EU-wide regulation would therefore be inappropriate in this context.

- With regard to the required system for managing conflicts of interest in Article 21 (1b), we therefore suggest adding the phrase "if applicable".

Internal reviews should assess the "composition, effectiveness and internal governance of the administrative, management or supervisory body". For IORPs involving members / beneficiaries, social partners (where applicable), and sponsoring undertakings, the provision to take into account "the nature, scale and complexity of the risks inherent in the activities of the IORP" is insufficient. Due account must be taken of the specific characteristics of IORPs, as required in Recital 32.

- We reject the European Commission's approach of applying governance requirements for financial service providers to IORPs without modification. We propose to add:

  "*Such internal reviews shall assess the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory body, taking into account the social function and the triangular relationship between the employee, the employer and the IORP as well as the nature (...)*"

4.2 Article 21 (4/4a): Compliance Function – we continue to reject this, now also based on years of experience

The European Commission had already proposed in March 2014 that this provision from the Solvency II Directive should also be introduced for IORPs (proposed IORP II Directive). The directive adopted in 2016 did not include this requirement – for good reasons. In our view, experience in recent years has not shown that the introduction of a compliance function for IORPs is necessary.

We do not consider the compliance function proposed by the European Commission to be necessary for IORPs. Compliance responsibilities are already embedded within the governance structures of (at least German) IORPs. Introducing an additional, EU-mandated compliance function would increase staffing and operational costs without delivering any significant added value.

The decision as to whether IORPs require a standalone compliance function should remain at the discretion of the Member States, allowing them to reflect existing supervisory practices and proportionality considerations.

- aba recommends refraining from amending Article 21 (4) and to not introduce the compliance function suggested in Article 21 (4a).

4.3 Article 21 (6): Person(s) who effectively run the IORP — keep MS' right to allow only one person

The existing right of MS – which the European Commission proposes to remove – that after a reasoned assessment, the IORP can be run by only one person, should be retained. The requirement "at least two persons" can lead to disproportionate costs, especially when IORPs are closed for new entries.

- aba recommends refraining from amending Article 21 (6). In particular IORPs in some kind of run-off mode should be able to be managed by only one person.

4.4 Article 21 (8 and 9) and Article 22 (2a): selecting members to the management or supervisory body – neither a contribution to SIU nor to reducing bureaucracy

Priority in the selection of members to the management or supervisory body has to be given to the "fit and proper" criteria and, in many IORPs, to an appropriate representation of both the sponsoring undertaking(s) and members / beneficiaries. In addition, we have to point out that IORPs also sometimes have difficulty finding the necessary specialists.

Obliging IORPs to publicly disclose their target for the representation of the underrepresented gender in the management or supervisory body, the policy on how to increase the number of the underrepresented gender and its implementation in their respective annual report would be overly burdensome and entail no significant added value for the target audience.

- The detailed requirements in Article 22 (8) and (9) for a gender balanced representation should be replaced by a general objective of IORPs to promote diversity and inclusion in the management or supervisory body.

The selection of members to the management or supervisory body and the persons carrying out the key functions is the responsibility of the IORP. The same applies to necessary changes.

- We rely on the self-responsibility of IORPs and their stakeholders and therefore encourage the deletion of the new Article 22 (10), giving the NCA the power to remove a person who effectively runs the IORP or has a key function not fulfilling the requirements.

4.5 Article 21 (10): Means, methods and powers of competent authorities – No lack of NCA powers to ensure compliance with government requirements

We do not recognize any lack of "appropriate means, methods and powers" of the NCA that justifies the adoption of the proposed Article 21(10).

- We rely on the self-responsibility of IORPs and their stakeholders and therefore encourage the deletion of Article 21 (10).

4.6 Article 22 (2): Continuous Assessment of Fitness and Propriety – Feasibility with an acceptable cost-benefit ratio is necessary

According to the European Commission, NCAs should be capable to continually ("*on an ongoing basis*") assess whether persons who effectively run the IORP, the administrative, management or supervisory bodies, persons who carry out key functions and, where applicable, persons or entities to which a key function has been outsourced fulfil the "fit and proper" criteria. We are afraid that the proposal, if adopted in its current form, would lead to legal uncertainty, in particularly how such an assessment on an ongoing basis would look like in practice. We also ask whether there are potential links to the "Regular supervisory dialogue" (Article 49a).

- Already today, the persons referred to in Article 22(1) are assessed upon taking up their duties as to whether they meet the fit and proper requirements. Should any relevant changes arise, there is an obligation to notify the NCA. Continuous supervision by the supervisory authority is therefore not necessary and would entail a significant administrative burden for both the authority and the IORPs. We therefore propose not to pursue the proposed amendment to Article 22(2).
- As a minimum, aba calls for clarification that "on an ongoing basis" does not imply continuous monitoring but periodic reassessment, whose cycle is to be determined at the national level.

4.7 Article 23 (3i): Remuneration policy – repeating "equal pay for equaly work" is neither a contribution to SIU nor to reducing bureaucracy

The principle of equal pay for male and female employees is part of the EU Treaties and thus binding in the MS. Since there are no indications for special imperatives of IORPs in this regard we see no reason why a repetition in the revised IORP II is necessary.

- aba recommends deleting Article 23 (3i) in order to avoid unnecessary regulation.

4.8 Article 26(2): Internal Audit Function – no action must also be possible

Concerning the new paragraph 2 that the European Commission proposes to add to Article 26, we point out that such processes are already common practice, at least in German IORPs. We can support the proposed addition of the new paragraph, as long as it is granted that the management or supervisory body can determine that non-action is a permissible alternative.

- We suggest clarifying that the administrative, management or supervisory body must retain the discretion of whether or not to act with respect to each of the internal audit findings and recommendations.
- Suggested phrasing of Art. 26(2):

  "*Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine if and, if applicable, what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.*"

4.9 Article 28 (2j): Own-risk assessment – no surveys of members and beneficiaries on risks and risk tolerance limits in collective pensions schemes

It is unclear to us whether surveys of members and beneficiaries are expected in connection with Article 28 (2i) or not. It should be clear that this additional requirement in Article 28 could only be reasonable for individual DC systems.

- We therefore suggest the following addition:

  "*For the purposes of the first subparagraph, point (i), Member States shall require that where, in accordance with the conditions of the pension scheme, members and beneficiaries fully bear risks, the risks and risk tolerance limits from the perspective of members and beneficiaries shall be considered, taking into account their capacity to bear risk and their risk appetite.*"

4.10 Article 30: Statement of Investment Policy Principles (SIPP) – of no concern to the general public

According to Article 30 the SIPP shall be made publicly available. While some of the additional required information could be of interest to the IORP stakeholders and the NCA, it is of no concern to the general public. IORPs are generally not in competition with each other, as membership is usually linked to an employment contract or collective agreement and not open to the general public.

A meaningful presentation of investment objectives and the investment in different asset classes, especially for DB retirement schemes, goes beyond mere capital investments. This does not seem to be reflected in the additional requirements.

The proposed mandatory inclusion of fixed investment objectives, deviation tolerances, and explanations for complex assets risks transforming the SIPP into a rigid supervisory instrument rather than a principles-based governance document. It is particularly inappropriate for IORPs operating DB / hybrid schemes, if risks are ultimately borne by the sponsoring undertaking(s).

aba strongly opposes prescriptive SIPP content and warns against establishing binding portfolio structures that increase compliance costs. Furthermore, we point out that a requirement to provide a clear statement of investment objectives for each pension scheme should be removed, as this would impose a disproportionate burden on IORPs managing a large number of pension schemes.

- We suggest omitting the proposed additions to Art. 30.
- At least, Sentence 1 of Art. 30 should be formulated as follows: "*Member States shall ensure that every IORP operating a pension scheme in which members and beneficiaries fully bear the investment risk authorised in their territories prepares and, at least every three years, reviews a written statement of investment-policy principles for this pension scheme*."
- If ommitting the proposed additions is not feasible, we suggest to replace the second sentence of the fifth paragraph ("*Where an IORP manages different pension schemes, separate statements of investment policy shall be prepared for each*.") with the following: "*In the case of IORPs that manage a larger number of pension schemes only a single statement needs to be prepared and, in addition, only the differences between the pension schemes need to be disclosed*."

4.11 Article 31 (5): Outsourcing – no breakdown of outsourcing costs and recognition of the special role of sponsoring undertakings

We do not understand why IORPs should disclose the costs of outsourcing to the supervisory authority. In particular, we do not see any benefit in the proposed breakdown of outsourcing costs. Agreements between IORPs and service providers usually comprise a package that is made up of different components. Those components and the total price of the package are interdependent. Additionally, as services are often specifically tailored to an IORP, they are often not comparable.

We would like to point out that in many German IORPs, the sponsoring undertakings provide "services" for IORPs in the interest of all stakeholders of the pension scheme. Future regulation should not discourage sponsoring undertakings from doing so in the future.

- We rely on the self-responsibility of IORPs and their stakeholders and therefore reject the amendment of Article 31 (5).

4.12 Article 33: Depositary Requirement – German IORPs have "Sicherungsvermögens-Treuhänder"

German IOPRs must already have a trustee for the security asset (Sicherungsvermögens-Treuhänder in §§ 128 - 130 VAG; Pensionskassen: §§ 234 (1), 212 (1); Pensionsfonds: §§ 237 (1), 212 (1) VAG). We therefore

assume that the proposed changes for the appointment of a depositary would have no impact on German IORPs.

5 Title IV: Information to be given to prospective members, members and beneficiaries

5.1 Article 36: Principles – No EIOPA Guidelines for Information requirements; the distinction between occupational pension schemes and personal pension products to be made by MS

When implementing legal requirements from a minimum harmonisation directive such as the IORP II, MS must be able to duly take into account the respective national specificities of their respective national corresponding systems. This is particularly important in pension policy, where there is significant diversity resulting from different political models for combining the three pillars of a pension system.

In our view, the provisions of the directive relating to information for prospective members (Article 41), during the pre-retirement phase (Article 42) and during the retirement phase (Article 43) are, in their current form, both fit for purpose and sufficiently clear. We see no need for additional requirements in the form of guidelines and consider such guidance to be inappropriate in the context of a directive aimed at minimum harmonisation.

- aba strongly opposes any extension of the scope of the IORP II Directive to include third pillar products distributed by IORPs (see 2.3). Extending the principles in Article 36 to personal products offered by IORPs is not relevant for German IORPs and should therefore not result in any additional requirements for them. The Commission's proposal is likely to have been prompted i.a. by French IORPs established by financial service providers following the implementation of the IORP II Directive. **However, the extension in the proposal may raise questions regarding the distinction between occupational pension schemes and personal pension products.** For example, there are pension entitlements that are established by an employer for a member in the context of an employment relationship (and not as a result of a consumer decision by a customer) and the contract is continued privately after the termination of the employment relationship (which is a legal right in some MS, such as Germany). In the latter case, it would not be appropriate to treat IORPs as providers of personal pensions. The information requirements in the revised directive should not unnecessarily blur the boundaries between occupational pension schemes and personal pension products. Therefore, all questions **regarding the distinction between occupational pension schemes and personal pension products should be addressed exclusively by the MS.**
- In any case, it should be clear that '**provide personal pension products'** means that the IORP is offering a product on an open market that is potentially accessible to everyone. In particular, where there are collective occupational schemes and no distribution activity, distribution regulations (IDD requirements or other) should not apply.
- We recommend deleting the proposed paragraph 4 in Art. 36 as a legal basis for EIOPA guidelines for information (Articles 41, 42 and 43). MS have primary responsibility for pension and tax policy. This entails differences in the role and structure of occupational pension schemes and personal pension products. An EU-wide harmonisation of information requirements through EIOPA guidelines – which will primarily entail costs – is therefore not in the interests of occupational pension stakeholders and has no place in an EU minimum harmonisation directive.

5.2 Article 37: Pension Tracking Systems – General Information - the added value of extending the term to 10 years for occupational pension schemes with collective investments is questionable

Extending the reference period for information on past performances from five to ten years – in cases where members bear investment risk or can take investment decisions – creates additional administrative burden for IORPs, which, in view of the characteristics of the pension promise, is in many cases not justified. This is particularly the case for schemes in which members have no possibility to make investment choices and for schemes without an open market access for retail customers.

The requirement to provide information on past performance of investments over a period of at least 10 years is disproportionate. The duration of the reference period should continue to be five years.

- We recommend restricting the information on the past performance to individual DC schemes and propose the following wording:

  "(g) where members fully bear the investment risk ~~or~~ and can take investment decisions, information on the past performance of investments related to the pension scheme for a minimum of ten years, or for all the years that the scheme has been operating where this is less than five ~~ten~~ years;"

5.3 Article 37a: Pension Tracking Systems – Responsibility lies with the MS; no cross-pillar EU standards in the revised IORP II Directive

The planned new requirement in Article 37 (1) that a pension tracking system – where one exists – must also cover the occupational pension entitlements organised by IORPs, as well as any individual pension products offered, is acceptable in principle. However, whether **information on beneficiaries** must be included alongside that on members depends on the structure of the payout phase across the three pillars and should therefore be decided by the MS.

Article 37a (2) and (3) contain a series of **detailed requirements for the design of national pension tracking systems**. As pension tracking systems are intended to cover all three pillars, the design should be left to the MS. The proposed creation of cross-pillar EU standards within the framework of the revised IORP II Directive is neither technically sensible nor politically acceptable.

Furthermore, many of the new requirements risk to produce unnecessary additional costs for IORPs that are not weighed up by additional benefits for members. Many requirements are unclear and produce legal ambiguities:

- "*up-to-date*" – is this a requirement for live data? The feasibility and associated costs of such an up-to-date overview, as well as the added value it provides for members, depend on the pension scheme (DB, DC and individual/collective). This (potentially costly) requirement may only be worthwhile for individual DC schemes or investment products. This would be inappropriate and an undue burden for other schemes, for which, for good reasons, information requirements are limited to providing information annually.
- The requirement of *„standardised, machine-readable and interoperable format enabling pension tracking systems to aggregate data on accrued rights, accumulated capital and projected benefits*

in a coherent and comparable manner" could lead to costly investments in administrative software that would be the most likely and most suitable data source.

- The requirement to "*aggregate*" raises the expectation that with a pension tracking system, isolated pension entitlements can easily be added up to an aggregate figure. However, experience from already existing pension tracking systems shows that systemic differences between different entitlements, e.g. with respect to projection methods or different adjustment mechanisms in the decumulation phase can make this seemingly simple task very difficult and risky in terms of liability risks as elaborated in more detail further below.
- The **level of detail in Article 37a (2) and (3)** also runs counter to the exclusive national competence for pension tracking systems as an instrument of national pension policy. Accordingly, the requirement in paragraph 6 that "*format and structure of the information to be transmitted to pension tracking systems shall be consistent with the* ***format and structure laid down in the Delegated Regulation*** *adopted pursuant to Article 38"* raises concern.
- The proposed amendments in Article 37a (4) could inadvertently create new **liability risks for IORPs** that provide data to pension tracking systems. Opaque requirements in a revised IORP II-Directive would unnecessarily increase such risks.
- The proposal for Article 37a (5) appears to be aimed at new supervisory powers in relation to **legal obligations vis-à-vis the operator of the pension tracking platform** without offering cause. Based on our empirical evidence, an underlying assumption that IORPs do not fulfil their obligations in MS with national pension tracking systems is baseless.
- In sum, the implementation of the current Article 37a would necessitate **significant changes to the national tracking system in Germany and significantly increase costs– without a clearly identifiable added value**. The design of national tracking systems is a matter for individual MS, and technical details such as structure and format must be tailored to the respective national pension systems and are difficult to standardise across the EU.

Background information on pension tracking in Germany (Digitale Rentenübersicht):

- In Germany, the national pension tracking system (Digitale Rentenübersicht) covers pension institutions from all three pillars. Since its legal purpose is to improve the information basis for retirement planning access is limited to pension scheme members (or savers for retirement purposes in the third pillar) during the accumulation phase.
- To the second pillar: Participation is mandatory for all pension schemes required under national and European law to provide annual pension benefit statements. This is the case for Direktversicherungen (direct insurance), Pensionskassen and Pensionsfonds. The deadline for a technical onboarding for mandatory participants expired on 1 January 2025. Since then, Digitale Rentenübersicht has been in regular operation. In the period up to 1 January 2025, despite standardised specifications for the data interface issued by Deutsche Rentenversicherung Bund, pension institutions subject to the connection obligation incurred significant costs, reaching six-figure amounts in the case of larger pension institutions.

Based on these considerations we suggest the following amendments:

- We support the establishment of national tracking systems to provide people with an overview of all three pillars of the pension system, thereby facilitating their pension planning. However, detailed EU standards granting extensive powers to the European Commission and EIOPA are neither appropriate nor necessary for this purpose.
- We therefore propose that Article 37a be limited to the following provision:

  "*1. Member States shall ensure that, where pension tracking systems are in place, they cover the pension entitlements administered by IORPs. Depending on the pension schemes and the individual pensions offered, the Member State decides whether the national tracking system applies only to members or also to those receiving benefits.*"

  The co-legislators should also consider a complete deletion of Article 37a.
- Other than that, aba calls for a substantial simplification, recognition of the competence of MS and elimination of "consistency" obligations.

Even the goals of a **European Tracking Service** would not justify such consistency obligations. We interpret the progress achieved so far in the development of a European Tracking Service (ETS) as a clear indication that a bottom-up approach is the most promising. The national tracking systems, which have emerged independently at national level, are themselves well suited to clarify—through a self-driven process—the conditions under which data can be aggregated at European level, notwithstanding existing differences in the underlying national data sets. Centralised requirements imposed at European level through a directive that applies solely to institutions for occupational retirement provision are not only unfitting for this purpose. They could also negatively hamper the further development process of the national tracking services and that of the ETS.

5.4 Article 38: General provisions – No EU standardized format and structure of the Pension Benefit Statement; no alignment with PEPP regulation

The proposal for Article 38 (1) aims at an obligation for the Pension Benefit Statement to "*provide information on the **level of risk borne by the member** …*".

- We recommend rephrasing any amendment in such a way that it allows to distinguish between:
  - the accumulation and payout phase;
  - the full risk is born by the scheme member and not
  - collective and individual schemes;
  - whether investment decisions are made by members or not.

  It therefore makes sense for this information to "take into account the specific nature of national pension systems and of relevant national social, labour and tax law" (see Article 38 (1)). The powers envisaged for EIOPA and the European Commission in Article 38 (6) are not consistent with this.

The planned amendment of Article 38 (3) sets up a new **"*up-to-date*" requirement** for data in a Pension Benefit Statement:

- In our view what can be considered "*up to date*" depends on the specific features of pension schemes. As elaborated further in our comments on Article 37a (2 and 3), adequate distinctions must therefore be made in the directive or by the MS.

According to the proposal for Article 38 (3), Pension Benefit Statements would be made available in accordance with **member's preference** (Article 38 (3)). In our view, the digitization of pension information and communication is definitely the way forward. Efficient standards for collective systems are therefore essential. That being said, the planned revision of paragraph 3 could turn out to be an obstacle for many IORPs' attempts to further expand digital information on pension benefits. The current proposal weakens the existing preference given to digital information. Instead of granting a right of the members to request information in paper form in cases where the IORP has given priority to digital information, the revision of Article 38 would establish a unilateral right of choice for the members. This would increase administrative burdens and costs for IORPs. Such burdens would be exacerbated if members can change their preferences at will, at any time and for an unlimited number of times.

- A requirement to ask each individual member about their preference may be appropriate for individual products, but not for collective pension schemes. We therefore suggest limiting the proposed requirement to personal products.

- We therefore propose the following wording in Art. 38 (3):
  "~~*Members States shall require that the information contained in the Pension Benefit Statement is accurate, up to date, consistent with the choices made and complete. To facilitate understanding, the information presented shall be layered and follow principles of good design*~~. *The Pension Benefit Statement shall be made available to each member free of charge on paper or through electronic means, including on a durable medium or by means of a website, at least annually. A paper copy shall be provided to members on request. In the case of personal pensions products this should be in accordance with the member's preference. Preference shall be obtained at least at the beginning of membership.*"

The proposed new requirement in Article 38 (3) that "***information shall be layered and follow principles of good design*"** appears to form the basis, in particular, for the new EIOPA task set out in Article 38 (6): "*EIOPA shall, after conducting consumer testing and industry testing, develop draft regulatory technical standards*".

- This why, above, we suggest deleting the amendment "*information shall be layered and follow principles of good design*".

- Article 38 (6) aims at creating a Union standardized format and structure for Pension Benefit Statements based on regulatory technical standards while, almost paradoxically, referring to (diverging) characteristics of different types of pension schemes.

  - The inclusion of such level 2 instruments doesn't fit into a directive that aims at EU minimum harmonization. In our view, the MS concerned and their NCAs are best suited to taking into account these different characteristics.

  - In addition, we strongly object to the idea of aligning such requirements for IORPs to the Commission Delegated Regulation (EU) 2021/473 (PEPP Regulation). PEPP is currently

mainly a savings product for individual consumers. It is markedly different from occupational pension schemes in many MS. In Germany, occupational pensions are based – except the social partner model (collective defined contribution) – on defined benefit promises for which the employer is ultimately liable. The latter are based on employer decision or a joint decision by social partners, high commonalities and little room for individual choices in the interest of an effective sharing of risks and economic efficiency.

- The PEPP regulation is not a regulatory benchmark for the information requirements applicable to IORPs, particularly not for collective schemes. We don't see the need for Union standardized format and structure for Pension Benefit Statements — and certainly not based on the PEPP regulation. This also applies, inter alia, to the "information on the level of risk borne by the member" required under Article 38(1).
- The proposal is likely to result in a high degree of granularity in the information requirements, which will in turn lead to additional burdens for IORPs. At the same time, much of the information will not be relevant to those entitled to benefits and will therefore be of little help.

➢ Article 38 (6) should be deleted as no power for level II regulation should be given to the Commission and EIOPA.

5.5 Article 39: Pension Benefit Statement and Article 40 Supplementary Information – Unnecessary new requirements especially for cost information and for projections are to be avoided; appropriate distinctions (type of pension scheme, collective or individual) are necessary

Article 39 (1g) of the proposal contains a significant expansion of the information on costs. We think that information requirements that are associated with costs should lead to added value for the member.

We recognize and welcome that it shall be taken into account whether "*members bear investment risk or can take investment decisions, information on the costs imposed and their impact*". This could limit unwarranted cost increases for DB schemes. But these detailed requirements are also overdimensioned for collective systems. In addition, they also do not fit for DB or hybrid schemes.

The wording "***all costs incurred, directly and indirectly***" is overly broad. In practice, German IORPs' administrative systems are unlikely to contain cost information in this form. These requirements do not correspond to the cost categories that are recognised to date.

From aba's perspective, the proposal hints at an "initial presumption" of IORP's costs being too high. We would therefore like to highlight that that recent cost surveys on IORPs conducted in Germany by BaFin have shown there is no empirical evidence to support such a generalised assumption. In Germany, the costs of most IORPs are significantly below those of life insurance companies.

The proposed new point j) clearly goes beyond the existing requirements for **projections**. We see the risk that prescribing a minimum of three scenarios might lead to an information overload rather than providing added value. aba also has reservations regarding the requirement to include an "unfavourable" scenario. There is no room for such a scenario in DB schemes. In the case of DC schemes, we consider that there are no established benchmarks for operationalising the concept of "unfavourable".

- To avoid legal uncertainty with hybrid schemes and an additional burden on collective DC schemes, we suggest the following addition:

  "(g) where members fully bear the investment risk ~~or~~ and can take investment decisions, information on the costs imposed and their impact, including: ..".

  Alternatively, point (g) should be fully deleted.

- We suggest phrasing the proposed point (i) as follows:

  "*(i) where members fully bear the investment risk, information on the past performance of the pension scheme or where applicable, the investment selection made, covering performance over a minimum of five years or in cases where the scheme or relevant investment option has been provided for less than five years, covering all the years for which the pension scheme or the relevant option have been provided; ~~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;~~"*

- We suggest phrasing the new subparagraph Article 39 (1) as follows:
  "*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 latter only where members fully bear the investment risk and can take investment decisions. ~~The estimated future value of retirement benefits shall be shown in real terms together with a short narrative explanation.~~*"

  A requirement to include an "unfavourable" scenario does not fit for DB schemes and should there be deleted.

  A requirement to show the future value of benefit in real terms would require a new type of calculation, thereby creating a disproportionate additional burden for IORP and for members to compare and understand the numbers, not to mention the need for further clarification of the underlying calculation assumptions. We therefore propose to delete this amendment.

- The planned amendment of Article 40 (1) point c) should be adjusted accordingly.

5.6 Article 41: Information to be given to prospective members – A reasonable cost-benefit ratio must be ensured; the type of the pension scheme must therefore be taken into account

We interpret Article 41 to mean that all new detailed information requirements set out in Article 41 (2) apply to all future members, regardless of how they join ("*Prospective members as referred to in paragraphs 1 and 3 shall be provided with the following ...*").

The proposed revised Article 41 (2) substantially increases information requirements, especially on **past performance** of investments (for a minimum of 10 years) and all direct and indirect costs. However,

these detailed requirements are only suitable for personal saving products and, possibly also for individual DC systems.

Article 41 proposes many additional pre-contractual information requirements. Implementing these is costly and should therefore only take place if they offer added value to potential members (cost-benefit analysis). We strongly urge for appropriate distinctions according to the type of pension scheme. The details should be determined at national level.

- We therefore propose changing the introductory sentence to Article 41 (2):

  "Prospective members where members fully bear investment risk and can take investment decisions and prospective customers of personal pension products as referred to in paragraphs 1 and 3 shall be provided with the following: .."

- In Article 41 (2) (a) the requirement to provide information on past performance of investments over a period of at least 10 years is disproportionate. The duration of the reference period should continue to be five years.

5.7 Article 41a: Information to be given to members and beneficiaries in the case of underperformance – IORPs performance must not be held against unsuitable benchmarks resulting mainly from consumer protection and ignoring national labour law

The proposed amendment of Article 41a (1) would increase existing information duties substantially by creating an obligation for IORPs to monitor their **performance against benchmarks set by NCAs**. These benchmarks would have to be clear, objective and transparent, covering costs and charges, gross and net returns and funding outcomes over defined periods (Article 41 (4)) with further details to be determined in EIOPA guidelines (Article 41a (5)). IORPs would have to inform their NCAs and provide justifications for an identified **underperformance**. At the behest of the NCAs and if underperformance persists for at least three years it would have to inform members. The information would have to be clear and understandable, allow comparison with comparable IORPs, and explain in simple terms the reasons for underperformance. Furthermore, the information would be provided through the usual communication channels, in particular those used for the Pension Benefit Statement (Article 41a (2) and (3)).

The proposed information requirements in Article 41a assume a personal pension world (customer seeks provider and chooses a saving product) and disregard the functioning of collective schemes and the additional protection by labour and social law. The requirement in Article 41a (1) that the "*scheme is in line with the risk tolerance of its members and beneficiaries*" assumes individual investment decisions. These regulations are incompatible with existing pension systems, including those in Germany.

From an IORP perspective, we doubt whether the proposed new article can achieve setting up suitable benchmarks in particular for IORPs with DB and hybrid schemes. By any means, suitable benchmarks would have to include features such as different pension and survivor benefits, services, guarantees by the employer and other protections offered by national labour law.

Furthermore, we feel that the consequences in terms of potential supervisory actions taken as a result of an identified underperformance are rather unclear and could potentially be far-reaching.

Generally, we find that there is a multitude of different goals behind this proposal, some of which might be conflicting with each other. The broader strategy appears to be to extend an IORP's responsibility beyond fulfilling of the obligations arising from the benefit promise to ensuring goals that root in consumer protection for financial products such as "value for money".

We also see these proposals as a part of a broader strategy aiming at a consolidation of the IORP landscape in the MS. Such an approach would include increased pressure by NCAs, most likely to be also based (in parts) on findings developed in the context the new "Regular supervisory dialogue" (pursuant to Article 49a from the proposal).

- All information requirements should offer added value to members and beneficaries (cost-benefit analysis). We therefore strongly urge for appropriate distinctions according to the type of pension scheme and taking into account relavant social and labour law. Article 41a, which is rooted in a financial product world, should be deleted or at least be limited to schemes where members bear the full investment risk, to schemes where members can take investment decisions and (if personal pension products are not completely removed from the directive; see general remarks) to personal products.
- Should the article be applied despite our recommendation: We support the approach of EU minimum harmonization for IORPs and therefore strongly oppose delegated acts and EIOPA guidelines. Article 41a(5), asking EIOPA for guidelines on "*methodologies for determining underperformance across Member States*" should also be deleted.

5.8 Article 42: Information to be given to members during the pre-retirement phase – information yes, but no advice or liability

The planned amendments would expand the scope of information requirements substantially. They might even go further and de facto create an obligation to provide advice on a case-by-case basis, which in Germany is not mandated by labour law.

Any assessments for aspects such as the suitability or the required level of "*stability or duration of retirement income"* require a vast amount of individual data. Such a requirement is practically impossible to fulfill. It goes without saying that such an explicit or implicit obligation would also produce new liability risks, which are currently not factored into the design of occupational pension schemes.

- We recommend refraining from any extension of information requirements that would effectively result in an obligation to provide advice on a case-by-case basis.
- Information requirements should be limited to what is required, in general terms – i.e. based on an averaged perspective – for decisions regarding the payout phase.

5.9 Article 43: Information to be given to beneficiaries during the pay-out phase – appropriate distinctions (type of payouts: payout type like annuity, withdrawal plan, installment payments; collective/individual) must therefore be taken into account

We welcome that the Commission's proposal for an amendment, by referencing to Article 39, points (g) and (i), annual (instead of currently "periodical") information on costs and past performance are limited

to schemes in which members bear investment risk. But it should be clear that detailed cost and performance information are not required for hybrid plans or collective schemes. Furthermore, for these plans, the information should continue to be provided "periodically" (and not **annually** as proposed). The associated costs could be expensive if the pension amount remains unchanged and offer no added value (this information can also be obtained from the bank statement).

Generally, we believe that all information requirements should offer added value to beneficiaries. Therefore, a cost-benefit analysis should be carried out before the proposed amendments are implemented. As IORPs in the EU are very diverse, there are significant differences regarding their potential added value between (and within) MS. MS should be left with the discretion of only applying the proposed amendments in contexts where they provide significant added value.

- We believe that all information requirements – also in the pay-out phase - should offer added value to beneficiaries. We therefore propose changing the first paragraph Article 43 (1):

  "Member States shall require IORPs to periodically ~~annually~~ provide beneficiaries with helpful information. This may include ~~about~~ the benefits due, existing ~~the corresponding~~ pay-out options, and a breakdown of all costs incurred and information on the past performance as referred to in Article 39, points (g) and (i).

  Depending on the pension scheme the ~~The~~ information shall also describe the main factors that could affect the level or duration of retirement income, including investment and life-expectancy risks, and shall indicate, where relevant, the right to change the pay-out option."

5.10 Articles 44a-d: Business Conduct Rules – not appropriate for collective pension schemes, in particular for DB schemes

The proposed new Chapter 4 in Title IV "**Duties of care**" (Article 44a), would establish the duty to ensure appropriate structure and implementation of the pension schemes (Article 44b), new procedures for the remedy of complaints (Article 44c) and the option of an out-of-court redress (Article 44d).

At least from a German perspective, this new set of rules appears inappropriate. Its application might be appropriate for individual DC schemes, i.e. in which members fully bear the investment risk and are able to take decisions (e.g. on investments).

The majority of all occupational pension schemes in Germany are DB. This will also remain the case for the foreseeable future. Furthermore, German IORPs exclusively follow a collective approach. There is no German IORP in which prospective beneficiaries make individual investment decisions – this likewise applies to our DC model ("social partner model"). Relevant decisions are taken collectively, involving the governing bodies of an institution, in which employers as well as employees or social partners are regularly represented. It is therefore ensured that the interests of the beneficiaries are adequately taken into account.

- We do not see the need for this additional regulation for occupational pension schemes stemming from financial market regulation. We suggest an investigation into whether and which business conduct rules are necessary for occupational pension schemes.

- We recommend refraining from applying new Business Conduct Rules uniformly to DB schemes that follow a collective approach.

6 Title V: Supervision

6.1 Articles 45, 45a and 48: Supervisory Powers and Resources – more tasks and resources for supervisory authorities have to be based on a cost-benefit analysis

The objective of strengthening NCAs' resources is understandable but should not result in harmonised staffing expectations. Germany's supervisory authority for example already possesses adequate powers and expertise. If there are issues or problems regarding the adequate resources of NCAs in other MS, then these need to be solved locally, as the IORP II is not the cause for this. We are, however, not aware of any EIOPA document in which such deficits among NCAs are addressed.

With regard to **Article 45**, we do not share the desire of European Commission and EIOPA for a constant increase in **tasks and resources**. It should also be considered that the supervisory authority BaFin in Germany is financed exclusively by the entities it supervises.

- Any expansion of tasks and resources for supervisory authorities should be based on a cost-benefit analysis.

With regard to **Article 45a**, we would like to point out that the implementation of the directive cannot be the sole responsibility of the NCA. A central role is played by the legislator (in Germany primarily the Federal Ministry of Finance).

We wonder what the „*the **verification on a continuous basis** of the proper operation of the IORPs' activities and of the compliance with supervisory provisions by IORPs*" in **Article 47 (2)** is supposed to mean in practice. We assume that the task of a supervisory authority remains the supervision of IORPs and not the taking over the IORP business.

- We recommend refraining from amending Articles 45, 47 (2) and 48 and adding a new Article 45a.
- At least, an impact assessment on the effects of those changes on the equipment (power, staff, resources) should be carried out before the European co-legislators decide on how to pursue with the proposed amendments.

6.2 Articles 49(1b), 49a: Regular Supervisory Dialogue – NCAs should also work in a risk-oriented manner and not take over main tasks of IORPs and their stakeholders

The proposed triennial supervisory dialogue with a strong focus on economies of scale reflects an unjustified assumption that larger funds are inherently more efficient (see above). Apart from the fact that monitoring the efficiency of institutions is not a competence of NCAs, the costs of IORPs are often borne by the sponsoring undertakings and are therefore not relevant for supervision. In addition, at least in MS such as Germany, where occupational pensions are still predominantly DB, employers remain ultimately liable if the IORP does not achieve the promised benefit. The European Commission's proposal completely ignores this:

- With regard to the new 49 (1b) that requires a **regular supervisory dialogue**, at least every three years, we would like to point out that the German NCA BaFin is conducting supervisory dialogue with the IORPs — however, the selection is risk-oriented. We support this approach.
- To achieve greater **consolidation** in Germany, new framework conditions for occupational pensions and IORPs are needed (including modification of labour law), going far beyond prudential legislation. This is only possible at the national level and with the legislative.
- **High value of trust:** The technical input of EIOPA for the reviews i.a. of the IORP II Directive contains many references to "trust", be it in the pension system or the pension providers. The DB pension systems in Germany were set up to last for decades. It is unclear to us how the high level of trust in occupational pension schemes could be maintained if the Commission's proposals were implemented.
- The tasks provided for in Article 49a (1) *(„The identification of vulnerabilities, inefficiencies and structural challenges, and to encourage strategic reflection on the long-term adequacy, efficiency and sustainability of the IORP, including the adequacy of its scale, its capacity for consolidation, cooperation or asset pooling, and the appropriateness of its organisational configuration to operate efficiently and deliver value for members and beneficiaries"*) are among the core tasks of IORPs and their stakeholders.

aba warns against turning supervisors into assessors of business models or consolidation strategies, which fall outside their mandate.

- ➢ It is not the task of NCA to ensure IORP consolidation. aba holds that the proposed Art. 49(1b) and Art. 49a should not become part of the IORP II Directive.
- ➢ Consolidation requires framework conditions that go far beyond prudential law.
- ➢ Despite reforms, the high level of trust in occupational pension schemes must be maintained.

6.3 Article 50: Information to be provided to the competent authorities – Massive expansion of EU reporting requirements for IORPs; contradiction to the EU approach to reducing bureaucracy

Article 50 is the blank check for detailed, fully harmonized EU reporting for IORPs. No differentiation based on the type of pension scheme is foreseen. The procedure includes i.a.

> "*information on investment returns, net of investment costs, and all costs and charges incurred in connection with their activities*";
>
> "*a lookthrough approach, ensuring that all costs and charges incurred at the level of investment funds, asset managers and transactions are included, and that the nonetting principle is applied*" and
>
> "*regularly quantitative templates specifying in greater detail and supplementing the information contained in the reports referred to ....*"

This will, among many other reporting requirements, making the EIOPA Opinion on the supervisory reporting of costs and charges of IORPs, effectively mandatory for all MS. In Germany, this opinion was – after an intensive BaFin investigation and many good reasons — not implemented.

To ensure uniform implementation, the Commission proposal provides for a technical regulatory standard.

We draw your attention to the current EIOPA consultation on the „**Discussion Paper for EIOPA's report on integrated data collection**". Chapter 4 refers to IORPs.

- We strongly reject an EU reporting system for IORPs that has no upper limits, and the role envisaged for EIOPA. We continue to consider the IORP II Directive appropriate as a minimum EU harmonization directive. MS should have the central role in the regulation and supervision of IORPs.
- In particular, the proposed Art. 50 (g) runs counter to the principle of minimum hamonisation and should be deleted.

6.4 Article 50a: Supervision of outsourced functions and activities – Focus on what is important and critical for IORPs

Article 50a grants supervisory authorities an unlimited mandate for supervision of outsourced functions and activities. This blank check is inappropriate – at least, **it must be limited to outsourcing function and activities that are important and critical for IORPs**.

We see no need for further increasing the requirements for outsourcing functions and activities of IORPs. We note that within the proposals of the Market Integration and Supervision Package (MISP) there are discussions on relief measures regarding outsourcing for asset managers (AIF and UCITS) at least in the context of transferring functions within (the newly defined concept of) an "EU group" to other companies without being subject to outsourcing rules.

6.5 Article 51: Transparency and Comparison – no comparison of supervisory approaches and pension schemes on a single public website

We view the additional sentence in Article 51(2) ("*The disclosure provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the competent authorities of the different Member States*") critically.

- A comparison of supervisory approaches is only useful and necessary if supervisory convergence is the goal. However, this contradicts the objective of an EU minimum harmonization directive. This addition should therefore be deleted.

Requiring NCAs in Article 51(4) to publish **comparable information on costs, performance, and risk for all pension schemes** is a result of misunderstanding the nature of occupational pensions i.a. in Germany, where members neither choose providers nor pension schemes. There is simply not a "free market" for occupational pensions, as membership in an IORP is usually linked to an employment contract

and is selected by employers or negotiated by social partners. The proposed amendments would consequently not provide any added value for members and beneficiaries. Apart from this, occupational pension schemes are hardly comparable, as they differ e.g. in the biometric risks that they cover and insofar as whether they provide guarantees or not.

The **investment performance of IORPs with DB schemes** depends not only on the pension promise but also significantly on the composition of the members and beneficiaries. How meaningful is a performance comparison of a closed IORP with a large number of retired beneficiaries versus an IORP with many young active members?

- Any comparison, especially if it is focused on performance and costs, would therefore rather cause confusion than increase transparency. There will never be an overview with "*clear, comparable and easily accessible information on the total annual costs, past performance and risk profile for all pension schemes*". aba stresses that subsidiarity must prevail and warns against product-market logic being imposed on occupational pension schemes. We therefore recommend omitting the proposed new Art. 51(4).

6.6 Article 55a – Collaboration Platforms – no further strengthening of EIOPA, revised Budapest Protocol is sufficient

We refer to the revised Budapest Protocol „Relating to the Collaboration of the Relevant Competent Authorities of the MS of the European Union in particular in the Application of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs) Operating Cross-Border Activity“.

- The expansion of EIOPA’s role in cross-border supervision via mandatory collaboration platforms and on-site inspection rights is unnecessary. As existing cooperation mechanisms for supervisory authorities (i.e. the Budapest Protocol) have proven to be adequate, the proposed new Article 55a would have little practical effects other than transferring more power/competences to EIOPA. aba cautions against centralising supervisory authority at EU level as an end in itself, i.e. without demonstrated need. The proposed new Art. 55a should therefore not be added to the IORP II Directive.

6.7 Article 62 – Evaluation

Article 62 outlines three key areas for evaluation, primarily concerning the consolidation of IORPs and the expansion of their scope of the application of this directive. We do not share the European Commission's problem analysis or objectives underlying this proposal. However, should this directive proposal be implemented in its essential aspects, we suggest the following points for evaluation:

- Regarding IORPs: Development of the number of employees and costs in NCA and EIOPA;
- Financial impact on occupational pensions of this Directive on current members and beneficiaries;

- Financial and other impacts of this Directive on sponsoring undertakings which had given pension promises which are organised by IORPs;
- The development of the occupational pension coverage since 2020, differentiated by pension provider;
- Development of the design of pension schemes, including the role of social partners.

Annex I: Schematical Comparison between personal pension products and occupational pension schemes

	Individual pension products	**Collective occupational pensions via IORPs**
Initiator / sponsor	Individual enters into a contract on their own initiative	Employer and/or social partners establish the scheme, access for individuals (employees) via labour contract / collective agreement
Primary objective	Individual saving and retirement provision	Collective old-age provision as part of the employment relationship
Legal basis	Contract law, tax law, supervisory law (specific to financial / insurance products)	Labour law, social law, tax law and IORP-specific supervisory law
Risk-bearing	Predominantly by the individual (investment, longevity, inflation risks)	Shared collectively; often with additional employer backing (especially DB)
Investment decisions	Taken directly or indirectly by the individual	Taken collectively by the governing bodies of the IORP
Governance structure	Provider-centred, product-oriented governance	Institutionalised governance with collective and often paritarian bodies
Cost structure	Retail product costs; limited economies of scale	Little to no distribution costs; Economies of scale through collective and long-term structures
Investment horizon	Depends on individual behaviour and choices	Long-term and stable, driven by collective liabilities
Portability	Generally high, but often associated with costs or disadvantages	More limited, but provides system stability and continuity. Dependant on type of promise.

Annex II: Mögliche politische Fragen zur EU-Altersvorsorgepolitik und zum EbAV-II-Überarbeitsvorschlag

- Was ist die richtige Zielsetzung einer EU-Aufsichts-RL - angemessene Regulierung für EbAV und die von ihnen organisierten Altersversorgungssysteme oder Zerstörung von Vorhandenem in der Hoffnung/Ziel, dass Besseres entsteht?

- Will man auch in Zukunft eine eigenständige Regulierung für EbAV? Will man für DB-Alterssicherungssysteme – unter Ausblendung der Ausgestaltung der Systeme und vorhandener Sicherungsmechanismen – die Regulierungslogik der Lebensversicherung übertragen?

- Ausblendung von nationalem Arbeits- und Sozialrecht (und damit auch Rolle von Sozialpartner und Trägerunternehmen) und damit eine weitgehende EU-Vollharmonierungs-RL für EbAV– welche Rolle soll und kann in Zukunft die betriebliche Altersversorgung noch spielen?

- Welche künftige Aufgabenteilung/Zuständigkeiten im Bereich der zusätzlichen Altersversorgung will man politisch? Soll EIOPA im Schulterschluss mit der EU-Kommission die künftige EU-Zusatzrentenbehörde werden oder sollen die Mitgliedstaaten weiterhin eine zentrale Rolle bei der Ausgestaltung der zusätzlichen Altersversorgung spielen?

- Was ist das „richtige“ Gewicht von SIU mit Anlagezielen für die ergänzende Altersversorgung einerseits und die Ziele der Rentenpolitik (die sich in den Mitgliedstaaten unterscheiden, allein aufgrund der ersten Säule, den vorhandenen Strukturen und wirtschaftlichen Möglichkeiten) andererseits?

Annex III: Links zu weiteren Positionierungen zur Überarbeitung der EbAV II-Richtlinie

EU

Quelle	Link
AEIP (EU-Verband für paritätische Einrichtungen)	AEIP Position paper on the Supplementary Pensions Package
EP, EMPL (Ausschuss für Beschäftigung und soziale Angelegenheiten; bei der EbAV-II-Überarbeitung mitberatender Ausschuss im Europäischen Parlament)	DRAFT OPINION on the proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision
InsuranceEurope (EU-Versicherungsverband)	Insurance Europe position on EC supplementary pensions package
OPSG (EIOPA-Interessengruppe betriebliche Altersversorgung)	OPSG own-initiative opinion on the review of the IORP II Directive
PensionsEurope (EU-Verband u.a. der aba)	PensionsEurope's Position Paper on the IORP II Review

Deutschland

Quelle	Link
aba	Kommentar „Ohne substanzielle Änderungen durch Rat und EU-Parlament bringt das Zusatzrentenpaket der EU-Kommission keine zusätzlichen Betriebsrenten" in BetrAV 8/2025
Deutscher Bundesrat	Empfehlung: Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates zur Änderung der Richtlinien (EU) 2016/2341 und 2016/97 im Hinblick auf die Stärkung des Rahmens für die betriebliche Altersversorgung
GDV	Comment on the amending Directives (EU) 2016/2341 and 2016/97 as regards the strengthening of the framework for occupational retirement provision