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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and Banking Union (IORP) Financial Services Attachés
Subject:	IORP WP 18 March: Consolidation of the Presidency questionnaire on the discussion paper on amendments to IORP II Directive, following the WP of 26 February. Replies from 21 MS

Presidency discussion paper on amendments to IORP II Directive - WP 26 February 2026 Deadline: ***6 March 2026***
From: AT, BE, BG, DE, DK, ES, FR, GR, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK **Updated: 18/03/2026 16:24**

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Thank you for your cooperation!

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Q1: Do MS support the proposed harmonised framework for cross-border transfers, including the use of a simple majority for approval of members, beneficiaries, or their representatives and the minimum participation threshold? If no, please explain/elaborate. Are there potential areas where further clarification is needed?	AT (Comments): Concerning Art. 12 a) To protect the interests of the beneficiaries a "double majority" should apply in case of a cross-border transfer. For active members, it is easier to form majorities than for beneficiaries. Therefore, it should be avoided that the active members outvote the beneficiaries. Concerning Art. 12 b) (majority shall be calculated based on the received responses.) Until now, Member States have been able to specify the determination of the majority required for decisions. If this leeway is removed, harmonization should ensure that any member or beneficiary not participating in the vote is informed of the consequences of such voting behaviour, at least those that are not obvious. BE (Comments):

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	We support in general the proposed harmonized framework for cross-border transfers and welcome the Commission's intention to remove barriers to cross-border transfers. We understand that the simplification of the consent procedure is driven, among other things, by the desire to facilitate consolidation and economies of scale. In view of this, we would like to point out that, as a result of the fact that the simple majority is calculated solely on the basis of the responses received, it will no longer be possible to obtain the implicit consent of the concerned members/beneficiaries. However, experience has shown us that in situations involving large populations of members or a closed plan with many passive members, it is sometimes only feasible to work with implicit consent. This proposal will be counterproductive for consolidation and the creation of economies of scale. BG (Comments): General comment: BG: We do not support the inclusion of any provisions related to personal pensions in the scope of the directive. IORP should regulate only occupational pensions. BG: We support in general facilitating cross-border activity of IORPs. However, there should be sufficient safeguards for the members and beneficiaries. In our view domestic transfers should not be governed by the directive as domestic transfers requirements take into account the specific structure of the pension system. With the current proposal the requirements for domestic transfers are linked with the requirements for cross border transfers and should not be more stringent. In some Member States the proposal would lead to lowering the safeguards. The term “in a timely manner” should be replaced with a clear deadline for the submission of the information to the members and beneficiaries on the

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	conditions of the transfer to enable them to effectively express a position on the proposed cross-border transfers. DE (Comments): From our point of view, a cross-border transfer must be based on a more substantial majority of members and beneficiaries. In any case, we think that the rules laid down in the articles of association of the IORP must have priority. More precisely, the Directive must not hinder members, beneficiaries or their representatives to fix a higher required majority in the articles of association. Drafting suggestion for Article 12 paragraph 3 point (a): '(a) **without prejudice to the articles of association of the IORP,** a simple majority of the members and beneficiaries concerned, or where applicable, a simple majority of their representatives; and' DK (Comments): Denmark has entered a scrutiny reservation, as a national election will be held in Denmark. As a result, our written comments should be considered preliminary until there is political clarification following the election. This could interfere with national provisions, laws etc. We do not see the need for provisions stipulating which majority should apply. ES (Comments): Although we positively value the effort toward clarification and greater harmonization pursued in the area of cross-border transfers, we believe that the regulation of the required majorities, as well as the minimum participation threshold, should be left to national legislations, which, as in

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	our case, sometimes require more reinforced (qualified) majorities. Thus, for example, in relation to cross-border transfers, our Law of Pension Plans and Funds provides that, where an occupational pension plan is subject to Spanish social and labour legislation, the required prior approval must be granted by agreement of the pension plan's supervisory committee. Such approval must include, at a minimum, the favourable vote of half of the representatives of the members. We would like to maintain this regulation. FR (Comments): FR: **General comment regarding proportionality following some Member States interventions during the CWP session:** **France wishes to express again its opposition to an overall proportionality regime, with a differentiation between medium and large IORPs.** This does not seem relevant, as this is a minimum harmonisation directive. Above all, it would pose a significant risk to the level playing field, given the different structures of IORPs depending on national markets – and with insurers and reinsurers. This does not prevent however the supervisor from applying certain requirements, in specific cases explicitly provided for in the text, taking into account the nature, scale and complexity of the scheme operated by the IORP, as already provided for in the IORP2 Directive. **Regarding Q1, France supports in principle** the proposals made by the Commission**.** Such changes may help increase the smoothness of cross-border transfers, while preserving sufficient consumers protection.

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	However, regarding majority rules, like other Member States have expressed during the session, France is considering whether it would be appropriate to lower existing requirements in European law, particularly with regard to consumer protection. Furthermore, the Commission provides very little evidence to support its claim that the current provisions constitute an obstacle to effective transfers, for reasons relating to the organization of voting rights rather than democratic reasons (explicit refusal by members and beneficiaries). There is a lack of a detailed impact assessment on this subject. Above all, the Commission is proposing rules that are less stringent but also more rigid. However, the flexibility offered by the current provisions also allows for adaptation to specific national circumstances, ensuring that majority rules set at EU level are flexible in their specific application – and therefore facilitates transfers in fact. **The trade-off between more rigid harmonization and national flexibility does not therefore appear to be obvious in terms of facilitating cross-border transfers.** **In any case, at this stage, France retains its position in order to analyse the impact of the proposed amendments on national law (Articles L.370-7 and R.370-8 of the Insurance Code) –** with potentially much less flexibility as existing rules catered for less stringent constraints due to adaptation to specific labour law context - **and plans to return to the issue after consulting with the relevant stakeholders.** On a technical note, as paragraph 11 remains unchanged, it is proposed that the amendment be deleted for the sake of tidiness and clarity. GR (Comments): EL: Although in principle we support the proposed harmonized framework, voting modalities for transfer decisions should remain a matter of social partners.

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	HR (Comments): **As a general remark and in light of our comments regarding the definition of IORP in Article 6, we would once again emphasize that it should be clearly stated that this Directive (and thus neither Articles 12,12a, 16 etc.) do not apply to national personal pension products, unless a Member State has opted to apply the IORP II Directive in full to these products, in line with Article 4 of the IORP II Directive.** With respect to Q1, in general, we support the proposal to harmonise framework for cross-border transfers. While we appreciate the Presidency clarification of the notion "in a timely manner" we would suggest including that clarification in the relevant recital (20) and also allowing Member State to specify the concrete deadline in national law. Furthermore, the manner in which members and beneficiaries are to be informed should be specified. If Member States or IORPs have the flexibility to determine the manner of informing the members and beneficiaries concerned, this should at least be clarified in the recital. Finally, we should consider introducing safeguards for those members that oppose to the transfer. HU (Comments): HU: We would like to thank the presidency for the provided materials. Yes, we support the proposed harmonised framework, including the simple majority proposal – as it simplifies the procedure. We don't suggest further clarification. IT (Comments):

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	The majority of Italian IORPs have the legal nature of associations and the thresholds and majority requirements proposed by the COM are not compatible with the national legal framework applicable to associations (for example, to decide the dissolution of the association and the devolution of its assets, the favorable vote of at least three quarters of the members is required by the law). Considering the relevant differences between the national rules applicable in general to Italian associations and the COM proposal, we believe that the thresholds and majority requirements for cross-border transfers cannot be harmonized at the EU level and should remain in the power of MS (and social partners where admitted), in order to maintain an uniform approach in their overall activity. For these reasons, we ask to maintain the current provision : Art. 12 paragraph 3 should not be changed (apart for the reference to cross-border transfers). LT (Comments): We can support proposed harmonised framework for cross-border transfers. LU (Comments): LU can be supportive of a more harmonised framework to facilitate cross-border transfers. MT (Comments): Malta agrees with the proposed amendments to the term “simple majority” for the approval of a transfer, as this would simplify the process of a transfer of an Institutions for Occupational Retirement Provision (IORP). NL (Comments):

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	While we are not convinced the current provision needs further harmonisation, we are not opposed to the proposed framework, provided that it is ensured that a significant part of the participants explicitly agrees to the transfer. We believe this is the case in the current proposal because of the combination of the simple majority requirement and the participation threshold. We strongly oppose watering down the current proposals in this regard. PL (Comments): PL: with regard to the approval of cross-border transfers, we stress the importance of applying and complying with national rules and point out that the rules of the Member State of origin should take precedence. PT (Comments): PT tends to support harmonising the approval framework for cross-border transfers to remove existing structural barriers, facilitate the achievement of scale and enhance legal certainty. We tend to see as favourable basing majorities on received responses, rather than on the overall universe. On minimum participation threshold, we fully support its depiction as the COM suggested, to guarantee satisfactory engagement. SE (Comments): SE can support a harmonised framework to some extent. It should also be clarified, in accordance with existing regulation, that 'majority' shall be defined in accordance with national law, especially for purely domestic transfers. SI

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	(Comments): SI has no objections to harmonised framework for the cross-border transfers. Although, we see that for really harmonised framework some provisions are missing: - When can the transfer agreement take effect? Only after it has been approved by the NCA. - The deadline by which the transfer must be completed, e.g. three months after the NCA approves the transfer. If the transfer is not executed soon enough, then the financial condition of the receiving IORP can be changed. - A transfer report must be prepared by the receiving institution (and the transferring institution). SK (Comments): Comment: We support introduction of minimum rules or basic principles for transfers. We consider broader and flexible scope of the provision as appropriate. We also agree with the use of simple majority and minimum participation threshold. We seek for further clarification on the concept of "*members and beneficiaries CONCERNED*" – in relation to the fact that information is to be sent to them or their prior consent is required. Are they only those *TRANSFERRING*? Or also those *WHO REMAIN* and/or members of the new IORP *RECEIVING*?
Q2: In the event that practical challenges are foreseen in implementing the revised crossborder transfer framework, do MS suggest any measures to ensure a smooth implementation?	DE (Comments):

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	No remarks. ES (Comments): We have no observations at this time. FR (Comments): FR: See above comment. GR (Comments): EL: We would propose the voting modalities to remain a matter of social partners. HR (Comments): In line with our general comment, the wording in Article 12 paragraph 1 should be more specific to make it clear that it refers only to “occupational pension scheme’s liabilities, technical provisions, etc.” IT (Comments): Please see our answer to Q1. MT (Comments): Malta does not have any comments on this point. NL (Comments):

Presidency questions	Comments
	We do not foresee practical challenges. PL (Comments): PL: with regard to the approval of cross-border transfers, we stress the importance of applying and complying with national rules and point out that the rules of the Member State of origin should take precedence. PT (Comments): In our view, the anticipated sharing of information concerning the transfer would benefit from greater precision in the Directive to mitigate diverging practices. In our view, a minimum harmonised timeframe could be previewed in the text. Moreover, we believe it would be worth further densifying the concept of "members and beneficiaries concerned" in Article 12 for the cases of partial transfers, clarifying which portion of stakeholders are to be considered within the disclosure requirements, the approval process and associated thresholds (should only be the ones directly transferred or should the ones remaining in the original scheme be allowed to intake, considering potential impacts on them as well?). SI (Comments): No.
Q3: Do MS support the introduction of minimum rules for domestic collective transfers between IORPs within the same Member State? If yes, do MS consider this framework likely to facilitate consolidation, improve cost	AT (Comments):

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efficiency, and strengthen professional management while safeguarding members and beneficiaries? If not, please explain/elaborate.	A domestic transfer means that both entities are supervised. If there are concerns regarding the receiving institution, these are already part of the regular supervision. Furthermore, we share the fundamental reservations of other Member States made in the last CWP concerning subsidiarity issues. BE (Comments): We do not agree with the proposed introduction of minimum rules for domestic collective transfers between IORPs and this for the following reasons: - This is contrary to the principle of burden reduction, as it leads to additional work for both the IORPs and the NCAs. - This procedure is provided for transfers "in the broadest sense". (all or a part of a pension scheme's liabilities, technical provisions, and other obligations and rights, and corresponding assets or cash equivalent thereof). This means that the prior approval of the NCA also applies e.g. when an individual decides to transfer its pension rights to another IORP (e.g. for a self-employed person or when changing employer). - It complicates the goal of consolidation, as it will be more difficult for small IORPs to transfer to a larger structure. - It is contrary to the principle of the level playing field between IORPs and insurers: this obligation applies only between IORPs and not to transfers to an insurer or between insurers. We therefore propose to delete the whole Article 12. BG (Comments): BG: Domestic transfers should be regulated at national level. The directive should retain its minimum harmonisation character.

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	Achieving the objectives of consolidation, cost efficiency and professional management depends on the specificities of the national market. It is more likely to happen in markets with many small schemes rather than in markets with limited number of providers managing multiple occupational schemes of different sponsoring undertakings. DE (Comments): No. We do not see any need or justification to include requirements for a domestic transfer in the Directive. We should keep the principle of subsidiarity in mind. DK (Comments): We have reservations about the proposed requirements on transfers and decision-making majorities, as these may interfere with existing national laws and the articles of association of IORPs. In our view, the rules laid down in the articles of association should take precedence, as also highlighted by several Member States. We do not see neither need nor justification to include these requirements in a EU Directive. ES (Comments): In line with the comment submitted in relation to Question 1, we welcome the introduction of minimum rules for domestic collective transfers. However, we believe that such regulation should be minimal rather than exhaustive. By requiring in the last paragraph of Article 12(a) that: "Where a Member State makes domestic transfers subject to the prior approval of the members and beneficiaries concerned, the **approval procedure shall not be more stringent** than the procedure set out in Article 12(3).", the capacity of each

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	Member State to regulate such transfers internally is significantly restricted. For example, this provision once again imposes a simple majority requirement, without allowing Member States to apply more reinforced (qualified) majorities regrading this matter, as is the case in Spain FR (Comments): FR: **France supports this amendment in principle.** Indeed, France understands that the first paragraph allows for Member States to design transfer rules with flexility, provided that those rules follow principle-based constraints (simple and transparent procedures, ensure the protection of members and beneficiaries, continued sound management of the pension schemes). France also considers that the existing provisions in national law (Articles L.384-3 and L.324-1 of the Insurance Code) already meet almost perfectly the requirements that would be laid down at EU level, particularly with regard to prior approval by the competent national authority and the elements it would have to verify. However, on principle: - France has the same reservations about the balance to be struck with regard to majority rules (although it would have no impact on existing national rules); - France questions the level of precision proposed by the Commission for the IORP Directive, a minimum harmonisation directive, given that such a level of precision does not exist within the Solvency 2 framework for domestic transfers (Articles 39 and 164) ; France is also mindful of comments made by other Member States in the CWP indicating that such rules could hinder consolidation in the sector, given their national market characteristics. Indeed, the French IORP sector is already highly consolidated, so the existing domestic transfer rules in national law are rarely used, which may not be the case in other Member States. **France**

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	therefore does not wish to express a strong opinion on this subject, which concerns national domestic situations. GR (Comments): EL: We do not have any major concerns. HR (Comments): Although we do not see specific added value in harmonising domestic transfers at EU level, we could be open to the Commission's proposal to introduce a set of clear minimum rules, while leaving Member States the discretion to impose additional requirements if deemed necessary. In that context, Article 12a, paragraph 2 in relation to Article 12(3) should be amended to reflect discretionary right of each Member State, in particular regarding the simple majority criterion. IT (Comments): As said before in Q1, we believe that the thresholds and majority requirements for the approval, by members and beneficiaries of the IORP, of transfers cannot be harmonized at the EU level and must remain defined by the Member States. This regards both cross-border transfers and even more national transfers. Therefore, we suggest redrafting the Article on domestic transfers simply stating that Member States should not prohibit domestic transfers and should not subject them to more restrictive rules than cross-border transfers. LT (Comments): We consider that domestic transfers should be regulated by national law and should not be subject to this proposal. Establishing common rules may be an additional administrative burden.

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	We could be open for introduction of minimum rules for domestic collective transfers between IORPs within the same Member State only if they are in line with the minimum harmonisation approach. LU (Comments): LU has already collective domestic transfer rules between IORPs in place. As a result, we would not oppose the introduction of such minimum rules. However, we question whether including such purely domestic provisions in EU legislation might run counter to the directive's minimum-harmonization nature MT (Comments): Malta supports the introduction of minimum rules for domestic collective transfers between IORPs within the same Member State as it will further clarify the domestic obligations. Furthermore, the provisions are very high level and would help create a more harmonised approach towards transfers within the EU. NL (Comments): We can support the proposal as long as it is clear that these are minimum requirements and they do not interfere with the national competence to set further rules in the interest of beneficiaries. PL (Comments): PL: the proposed changes will entail additional administrative burdens, which may consequently contribute to the consolidation of IORPs. We postulate that subsequent versions of the provisions should take into account national regulations and national specificities. We reiterate the differences in the

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	functioning of IORPs in different countries (not for all IORPs the pan-European framework may be an appropriate reference). Further clarifications from the EC regarding the proposed procedure are necessary. PT (Comments): At this stage, PT is sceptic on introducing minimum rules for domestic transfers as suggested by the COM, questioning its intended purpose as MS already have national frameworks in place that ensure prudential soundness and member protection. Additional requirements may risk duplicate existing procedures, increase administrative burden and potentially delay restructuring processes. We also fear this new framework may hamper existing national rules for the transferring of Pilar 3 products offered by IORPs and compromise the existing level playing field between other providers, such as insurers (as the new EU requirements will only apply to national transfers between IORPs). PT considers important to ensure that, whenever domestic transfers can be requested by the members and beneficiaries themselves, such transfers are not made subject to a prior approval requirement by the supervisory authority. SE (Comments): SE has already introduced rules on domestic portfolio transfers that align with the proposed requirements. SI (Comments): No objection. SK (Comments): Comment:

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	We prefer minimum harmonisation to be kept and we would support less administrative burdens to keep the procedure smooth. We ask for clarification (either in the recital or in the article) on the notion of domestic collective transfers from one IORP to another, whereas the goal is to enable consolidation and restructuring of pension schemes within the respective MS´s territory – specifically the wording "…transfers between IORPs authorised within the same Member State of all or a part of a...". The provision should not apply to individual transfers among IORPs within the same Member State since in such cases the interests of other members cannot be affected. The rules should also respect the nature and design of the pension scheme of the MS.
Q4: Do MS agree with the requirement that domestic transfers be subject to prior approval by the competent authority?	AT (Comments): No. In case of domestic transfers, there is no need for prior approval by the competent authority. BE (Comments): We do not agree with the proposition that domestic transfers should be made subject to prior approval by the competent authority and this for the same reasons as mentioned above under Q3. We understand that COM proposes rules for cross-border transfers, since these impact the internal market, however, we are of the opinion that the EU cannot impose rules for domestic transfers since these are governed by social and labour law and the argument of the internal market is not valid here. BG (Comments): BG: Domestic transfers should be regulated at national level. DE

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	(Comments): See answer to Q3. ES (Comments): We do not agree with this requirement. We believe that the involvement of the supervisory authority is not necessary, since, as in our case, the decision is taken by the pension plan's supervisory committee, which is composed of representatives of the sponsor or sponsors and representatives of the members and, where applicable, the beneficiaries FR (Comments): FR: France supports as it already exists in its national law (see comments above). GR (Comments): EL: We do not have any major concerns. HR (Comments): We can agree with the requirement that domestic transfers be subject to prior approval by the competent authority. IT (Comments): We are not in favor of the introduction of the general duty of NCAs to authorize domestic transfers, considering that this implies an excessive and unjustified burden for the NCAs and it could slow down the process of consolidation of IORPs. The consolidation processes of Italian IORPs are

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	strictly supervised by the NCA, which receives all the necessary information ex-ante. However, there is no formal approval procedure in place. LT (Comments): In our opinion domestic transfers should be regulated by national law. LU (Comments): LU agrees. MT (Comments): Malta agrees with the requirement that domestic transfers should be subject to the prior approval of the national competent authority (NCA) as this will ensure better member protection, given that the NCA will have the time to assess the receiving IORP before providing its approval. NL (Comments): Yes, we agree with the requirement that domestic transfers be subject to prior approval by the competent authority. This is standing practice in the Netherlands. However, should this requirement be removed we assume this would not restrict our competence to set this requirement in the national context. PL (Comments): PL: detailed solutions should be left to the Member States, which know the specifics of their own markets. The existing rules of proportionality should be taken into account in the way occupational pension funds are operated, and IORP oversight.

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	PT (Comments): Please refer to the concerns expressed in our answer to Q3 and the compromise approach advanced in Q6. SE (Comments): SE agrees. SI (Comments): Yes, in SI we already have this requirement. SK (Comments): Comment: We agree with the prior approval by the competent authority exclusively in the case of transfer of the entire pension fund. Individual transfers should be excluded (see comment above).
Q5: Are the proposed criteria for approval (accuracy of information, soundness of IORPs, fitness of managers, protection of members, sufficiency of assets) clear and feasible to implement?	BG (Comments): BG: Domestic transfers should be regulated at national level. DE (Comments): See answer to Q3. ES (Comments):

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	We have no observations at this time. FR (Comments): FR: France supports as it already corresponds almost perfectly to the requirements already existing in its national law (see comments above). GR (Comments): EL: We do not have any major concerns. HR (Comments): In general, we find the proposed approval criteria (accuracy of information, soundness of the IORPs, fitness of managers, protection of members, and sufficiency of assets) to be clear. Our understanding of the provision is that a Member State has the flexibility to define the procedure for transfers in its national law and to specify in more detail the requirements applicable to domestic transfers. IT (Comments): Please see our answer to Q4. LU (Comments): Yes, we consider that the proposed criteria would be feasible to implement. Enough flexibility has to be preserved with regards to how the sufficiency of assets should be defined according to Article 12a (d) to cater for proportionality related to differences in national IORP structures.

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	MT (Comments): Malta agrees with the proposed minimum criteria for transfers and considers these requirements as clear and feasible to implement. NL (Comments): Yes PL (Comments): PL: detailed solutions should be left to the Member States, which know the specifics of their own markets. The existing rules of proportionality should be taken into account in the way occupational pension funds are operated, and IORP oversight. PT (Comments): Please refer to the concerns expressed in our answer to Q3. SI (Comments): Partly: we do not see the merit to require fitness of bord member, as this should be true all the time, regardless of the transfer as it is required by Article 22 (1). A board member should always be fit. Otherwise, he/she cannot be a board member. The other criteria (accuracy of information, soundness of IORPs, protection of members and sufficiency of assets) must be met before authorisation of the transfer can be granted. We also miss a provision that the transfer cannot be authorised if the members' rights could be threatened.

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	SK (Comments): Comment: We agree with the criteria proposed, but only for the purpose of transfer of the entire pension fund (see comment above).
Q6: In the event that practical challenges are foreseen in implementing the minimum rules for domestic transfers, do MS suggest any measures to ensure a smooth implementation of domestic transfers while taking national specificities into account?	BE (Comments): Our suggestion to ensure a smooth implementation of domestic transfers is to have these rules in the national social and labour law. We do not see reasons to have EU rules in this matter.It will be a step back for Belgium. BG (Comments): BG: Domestic transfers should be regulated at national level. DE (Comments): See answer to Q3. ES (Comments): We have no observations at this time. FR (Comments): FR: No further comments (see comments above) GR (Comments):

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	EL: We do not foresee any major practical challenges. HR (Comments): We are still in the process of assessing the proposal; however, at this stage, we have not identified any major challenges. However, in light of our general remark regarding the application of IORP rules to national personal pension schemes, we hereby propose to also specify the wording in Article 12.a to make it clear that it refers only to "occupational" pension scheme's liabilities, technical provisions, etc. and not to other types of pension schemes. MT (Comments): Malta does not have any comments on this point. NL (Comments): We see not practical challenges and do not consider it necessary to take additional measures that could infringe the minimum harmonisation character. PL (Comments): PL: the proposed changes will entail additional administrative burdens, which may consequently contribute to the consolidation of IORPs. We postulate that subsequent versions of the provisions should take into account national regulations and national specificities. We reiterate the differences in the functioning of IORPs in different countries (not for all IORPs the pan-European framework may be an appropriate reference). Further clarifications from the EC regarding the proposed procedure are necessary. PT (Comments):

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	As a potential way forward, PT would view as more favourable depicting in the Directive the minimum obligation of a timely notification to the CA, which also appears to be more proportionate for pension funds of low complexity. PT considers that different minimum levels of requirements should be established depending on the nature, size and complexity of the pension plan concerned. Accordingly, whenever under national legislation the member and/or beneficiary is allowed to request the transfer, such transfer should be possible without any additional requirement. For the remaining cases, PT considers that, depending on the nature, size and complexity of the pension plan, a simple notification to the supervisor may be sufficient. SI (Comments): SI would support additional requirement similarly as for cross-border transfers and that are: - The transfer agreement can take effect only after it has been approved by the NCA. - The deadline by which the transfer must be completed, e.g. three months after the NCA approves the transfer. If the transfer is not executed soon enough, then the financial condition of the receiving IORP can be changed. - A transfer report must be prepared by the receiving institution (and the transferring institution).
Q7: Art. 14 Do MS agree with the proposed changes? If not, please explain.	BE (Comments): We agree with the proposed changes.

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	BG (Comments): BG: It is not clear what are the reasons for allowing a 10-year period to address underfunding in Art. 14, para 2, last subparagraph. Further clarification is needed. DE (Comments): Overall, we agree. ES (Comments): We agree. Regarding the time limit set in Article14.2 paragraph 2, in the case of Spain is 5 years, extendable to 10, so we consider that the 10-year threshold is correct. FR (Comments): FR: No further comments (see comments above) GR (Comments): EL: We have great concerns about this provision, since allowing underfunding for up to ten years is too permissive and may reduce incentives to restore solvency in a timely manner. A 10-year recovery period could allow vulnerabilities to persist for too long, which put members and beneficiaries at greater risk. We consider that a 6-month period is sufficient. For existing IORPs which do not cover their technical provisions, a grandfather clause could be considered. Furthermore, we have major concerns about the deletion of the fully funding requirement (paragraph 3 of art. 14), as this would significantly weaken the

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	protection of members and beneficiaries. Cross-border operations should continue to be required to be fully funded at all times, given that they inherently involve additional complexity and risk, which should not be accompanied by looser financial safeguards. HR (Comments): We agree with the proposed changes in Article 14. However, with respect to Article 13, we would like to reiterate our general comment that we disagree with the application of the IORP II Directive to national PPPs. Article 13(2) of the current IORP II Directive clearly limits the calculation of technical provisions under the IORP rules exclusively to occupational pension schemes. From the proposed amendments to this provision, it now appears that an IORP which, in addition to its IORP business, also operates personal pension scheme business must include in its total technical provisions not only the obligations arising from the IORP part of its business but also the obligations arising from the personal pension scheme business (which would need to be calculated in accordance with the methodology set out in the IORP Directive). Furthermore, we suggest further specifying the term “pension schemes” in Article 13(2), as it may encompass different types of pension schemes (not only those outside the scope of IORP, but also those outside the scope of PPPs). IT (Comments): We agree with the changes made to paragraph 2 of Article 14 and with the time limit of 10 years. Instead, we ask to maintain **paragraph 3**, which has been deleted in the COM proposal, considering the need to assure that IORPs carrying out cross-border

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	activity are fully funded, particularly at the beginning of their cross-border activity in a new MS. LT (Comments): We could support the introduction of 10 year time period for recovery in case of underfunding only if it is the maximum limit and allows to set a shorter timeframe as it would be proper in many cases. We also share the concerns on deletion of paragraph 3 related to the requirement for fully funded technical provisions in the event of cross border activity. LU (Comments): LU does not agree. We are concerned by the rationale of allowing underfunding of a pension scheme for a prolonged time. In our view, this risks to weaken members and beneficiaries' protection considerably. In addition, deleting paragraph 3 further adds to the member and beneficiary protection concerns in a cross-border context. We can therefore not accept its deletion. The current rules should not be amended, neither on the MS option itself to allow for temporary underfunding, nor on the deletion of paragraph 3, which provides for a necessary underfunding safeguard in a cross-border context. MT (Comments): Malta does not have any defined benefit schemes in its jurisdiction, hence it has no comments to raise on the matter. NL (Comments): We oppose the deletion of paragraph 3, as this could lead to less protection for participants without additional safeguards. We also believe that a 10-year

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	period of insufficient asset coverage of technical provisions is too long and not in the interest of members and beneficiaries. In our opinion 1-2 years is more appropriate. PL (Comments): PL: the new obligations imposed on national supervisors should be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. It would be advisable to leave this matter to the Member States. PT (Comments): In the absence of evidence sustaining current MS discretion has not been effective in this regard, PT is inclined to defend the maintenance of national judgment on whether to allow the underfunding of technical provisions, considering the impact this option yields on the protection of members and beneficiaries. Regarding the removal of the fully funded obligation for cross-border activities, we tend to support the way forward so as not to negatively discriminate such practices. SE (Comments): Sweden does not agree with the proposed changes to Article 14. Beneficiaries of occupational pension schemes have preferential rights to the assets used to cover technical provisions. Allowing IORPs to have insufficient assets would jeopardise this. The possibility to allow temporary underfunding must remain a Member State option. Furthermore, underfunding of technical provisions combined with IORPs

Presidency questions	Comments
	increasing the risk of their investments (Article 19), may have negative consequences for consumer protection. SI (Comments): SI has problems with the deletion of fully funding requirement in case of cross-border operations, i.e. Article 14(3) is deleted. We prefer to keep it.
Q8: Art. 14 Do MS think that despite having a maximum timeline defined in the Directive, some flexibility should be provided to Member States to allow for some extra time, in case this is deemed necessary?	AT (Comments): We recognise that the chosen period of ten years is used in several provisions. However, it could be worth to consider a shorter period. BE (Comments): We propose removing the 10-year limit, and refrain from mentioning any limit, because the duration of an appropriate recovery plan will depend heavily on the specific situation. Furthermore, we fear that specifying a period of 10 years will lead IORPs to assume that a 10-year period will be granted in any case (while recovery plans are already in most cases limited to 5 years in Belgium). On the other hand, it should be possible to allow a longer period than 10 years in certain specific cases. We think of the situation where a government guarantee can be provided for the long-term financing of the pension obligations. This concerns, among others, IORPs that manage pensions for government institutions, the public sector, semi-governmental institutions, etc For those reasons we consider it preferable to remove the 10 years limit in the text and leave it up to the supervisor to accept longer recovery periods, considering the specificities and eventual other guarantees that can secure the pension promise.

Presidency questions	Comments
	DRAFTING proposal: We therefore propose to delete the 2nd § of Art. 14.2 ("*The limited period of time referred to in the introductory wording of the first subparagraph shall be determined by national law and shall in any case not exceed ten years.*") BG (Comments): BG:10 year timeline for covering the deficit seems too long, and adding further discretion for extra time on top of it seems excessive. Rather than setting in an EU act such a long period with possible prolongation and making it look like some standard time limit, we prefer to be removed altogether. DE (Comments): No. ES (Comments): We consider the limit of 10 years should always be respected. FR (Comments): FR: France fully agrees with the rationale presented by the Presidency and in Recital 22: (i) the national competent authority should have flexibility, under (ii) a maximum timeline that should not be too short. However: - **First, a 10-year delay seems far too long and unrealistic both to compel the institution to act quickly and to compel supervisors to act effectively, ensuring an effective return to normal. A shorter maximum period must be set.** France thus echoes the request made

Presidency questions	Comments
	by a large number of Member States in the CWP. For instance, under national law, article R.441-7-4 of the French Insurance Code stipulates that in the case of defined benefit contracts (funded point-based schemes), the maximum recovery period is one year when the IORP provides cross-border services. Second, this is a maximum period, and **France is therefore opposed to allowing even greater flexibility.** GR (Comments): EL: We have strong concerns on such a provision, especially when it is combined with the deletion of the fully funding requirement for cross border business. HR (Comments): In our view, 10 years is a well-balanced time period taking into account the long-term nature of pension funds. We do support the possibility for a Member State to shorten this period under national Law, taking in consideration the local practices and circumstances. IT (Comments): Yes, some flexibility should be provided to Member States and their NCAs. LT (Comments): Considering the introduction of provisions allowing long maximum time period (10 years), the flexibility could be maintained only for exceptional circumstances. MT (Comments):

Presidency questions	Comments
	Whilst Malta does not have any defined benefit schemes in its jurisdiction, it is to be noted that the 10-year period as defined in this Directive may be too lengthy. NL (Comments): As 10 years is already far too long, we do not think that more flexibility should be provided. PL (Comments): PL: the new obligations imposed on national supervisors should be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. It would be advisable to leave this matter to the Member States. PT (Comments): PT sees no constraint in depicting a harmonised ceiling, applicable in the cases in which MS discretion permits the underfunding of technical provisions. Nevertheless, we believe providing for flexibility in compliance with such a threshold would crowd out the pertinence of having a threshold in the first place. If the intention is to have a ceiling, it should be high enough to allow for the intended flexibility, with MS having the ultimate power on determining the specific applicable value. SE (Comments): Yes. Underfunding should be a national matter. In Sweden, IORPs are already regularly stress tested, enabling early identification of solvency issues. The proposed time limit is already very long and should not be further extended. Longer periods of underfunding may lead to financial instability in the long term.

Presidency questions	Comments
	SI (Comments): No.
Q9: Art. 16 - Do MS agree with the proposed changes and the wording and terminology used therein? Do MS have any suggestions as to how the DA empowerment could be further framed?	BE (Comments): We do not have any comments relating to the changes proposed in Art. 16. BG (Comments): Q9: BG: We would like to reiterate our position that the scope of the directive should not extend to personal pension products regulated at national level and all new texts in the directive relevant to personal pension products/personal retirement provision should be deleted. DE (Comments): We agree and welcome that Article 16 does not contain any DA empowerment. ES (Comments): No comments at this time FR (Comments): FR: France supports. GR

Presidency questions	Comments
	(Comments): EL: We do not have any major concerns. HR (Comments): As already stated, we do not agree with mandatory application of IORP II Directive to national personal pension products in cases where IORPs are allowed, in addition to their occupational business, to provide such products, unless a Member State has opted to apply IORP II Directive in full also to those products, in line with Article 4 of the IORP II Directive. Therefore, we do not support the application of Article 16 to national PPPs. IT (Comments): No objection at the moment. MT (Comments): Malta notes the amendments to Article 16 of the IORP II Directive which requires the maintenance of an adequate available solvency margin with respect to the entire business. Malta is concerned to note that there will be no harmonisation with respect to what such solvency margin should be or how it is to be calculated, as the IORP II only provides what the solvency margin shall be comprised of. Malta has no comments to raise with respect to the empowerments of the Delegated Act. NL (Comments): We understand this question to relate to article 17. For article 17 see our answer to Q10. However, should this question relate to article 16: we agree with the proposals regarding article 16 PL

Presidency questions	Comments
	(Comments): PL: no agree. We consider this to be a preliminary interference with national IORP supervisory rules. These issues should remain the responsibility of the Member States, and more specifically within the competence of the institutions that carry out financial supervisors of IORPs, which are familiar with the specificities of IORPs' activities at national level. The EC should not be able to be overly flexible in determining the so-called level 2. Once again, we report the need for only minimal harmonisation of the proposed regulations. PT (Comments): While the introduced updates to Articles 16 are broadly understandable, PT is reluctant to foresee the adjustment of solvency margin parameters through DA in Article 17. Recital 23 recognises certain parameters, by having remained unchanged for years, may require adjustment. In our view, this reflection should ideally be conducted at this stage with potential modifications being introduced directly during the negotiations between co-legislators. Core prudential elements such as the calibration of solvency margins should primarily remain at Level 1, as frequent or open-ended adjustments through DA could undermine stability and the minimum harmonisation character of the Directive, while running counter current initiatives to promote regulatory simplification. SE (Comments): No comments. SI (Comments):

Presidency questions	Comments
	SI would like to point out that there is no minimum capital requirement, as there was in the Life Insurance Directive. With the introduction of the Solvency 2 Directive, the IORP II Directive adopted the provisions previously included in the Life Insurance Directive. However, one important element was not copied: the minimum threshold, which is now set at 4 million euros for life insurance undertakings.
Q10: Art. 17 - Do MS agree with the provisions of new paragraph 7 in this article? Are MS aware of any evidence which could indicate the need for revision of the existing numbers and parameters specified in this Article? If so, please explain.	AT (Comments): Legislation on L1 might seem more appropriate than delegated acts. BE (Comments): We do not see the need for the EC to adjust the numbers and percentages, furthermore it is not clear on what basis EC will determine these numbers and percentages BG (Comments): Q10: BG: In our view this matter should be regulated only at level 1 legislation. DE (Comments): We do not support empowerments for instruments like delegated acts or guidelines. Regarding the proposed empowerment of Article 17 paragraph 7, we highlight that the numbers and percentage values in articles 17 and 18 are fundamental for the IORP framework, for they fix the minimum amount of the solvency capital requirement. Essential decisions on the IORP framework must be made on level 1.

Presidency questions	Comments
	Drafting suggestion: Delete Article 17 paragraph 7. ES (Comments): No comments at this time FR (Comments): FR: (Q10 – *not possible to put in Q10 box as it is still protected)* Articles 17 and 18 sets out the methods for calculating the solvency margin, with a comprehensive formula based entirely on figures and percentages defined directly at Level 1. However, **before providing for a delegated act empowering the Commission to amend these data, it is necessary to determine whether they are already still not appropriate, regardless of the appropriate vehicle. A review such as the one currently under negotiations should serve this purpose.** The Commission seems to imply in recital 23 that this could be the case, even now, since they have remained unchanged since their introduction. **France therefore asks the Presidency to schedule an update of this discussion on the basis of a quick assessment by the Commission and EIOPA of the appropriateness of these data**: within the framework of the SIU agenda, it is not relevant to overburden our IORPs. The Dutch delegation has already put forward some points in its answer to the consultation this summer and orally during the CWP session. **Substance is needed here: it is probably better to assess it now.** France is ready to contribute to this discussion.

Presidency questions	Comments
	On this basis, France believes that the Council will either be able to change the data directly at Level 1 or provide for a Level 2 text if necessary. **France wishes to keep an open mind on this subject, as long as it is based on documented and substantiated evidence.** GR (Comments): EL: We have serious concerns about empowering the Commission to amend, through delegated acts, the quantitative parameters and percentages of the solvency margin (Art. 17(7)). Any change to them should be decided by the co-legislators through Level 1 legislation. HR (Comments): If there is a concrete evidence and need to change the data, we would prefer to include the proposal in the Level 1 text, but we could also be open to delegated acts under the conditions explained in the Presidency paper. IT (Comments): The possibility of amending the numbers and percentages referred to in paragraph 7 is not consistent with the nature of these provisions. Such modifications should be addressed at the level of primary legislation, i.e., through amendments to the Directive itself, and not by means of a delegated act by the Commission. LT (Comments): Regarding article 7 new paragraph 7 – we do not support the delegation and consider the requirements should be set at L1. LU (Comments):

Presidency questions	Comments
	We do not see any need for a delegated act. If technical adjustments are warranted at this stage, then the revision of these parameters should instead be introduced directly at Level 1. MT (Comments): Malta is in agreement with the provisions of the new paragraph. NL (Comments): Some of the percentages and numbers in Article 17 are outdated and should be adjusted to the current time frame. In particular, the mortality rate of 0,3% and the reinsurance retention rate of 50% in Article 17(2)b are overly conservative in today's reality. Mortality rates have roughly decreased by 50% in the last decade, so we believe a mortality rate of 0,15% instead of 0,3% would be appropriate today. For the retention rate we believe that 20% would be a reasonable figure given more severe requirements for (re)insurers today and given further professionalisation of risk management (and considering too that there never was an analytic basis for 50% as remarked by the EESC at the time). We find the adjustment of these numbers important because the 0.3% and 50% can lead to required solvency margins of over 10% (!) for new pension funds, erecting a serious entry barrier for starting IORPs. New pension funds typically start with high risk exposures as % of technical provisions given that they have no or very limited technical provisions, while risk coverages (e.g. for survivor's pensions) are already in place. These coverages are, logically, fully reinsured. However, since the deduction for reinsurance is capped at 50%, the result can be unrealistically high and "unworkable" required solvency margin.

Presidency questions	Comments
	We strongly believe that these percentages and numbers should be adjusted and can follow the reasoning of several Member States that this should be done on L1. We are happy to work together with other MS and supervisors to further define the changes to be made to the relevant parameters. PL (Comments): PL: no agree. We consider this to be a preliminary interference with national IORP supervisory rules. These issues should remain the responsibility of the Member States, and more specifically within the competence of the institutions that carry out financial supervisors of IORPs, which are familiar with the specificities of IORPs' activities at national level. The EC should not be able to be overly flexible in determining the so-called level 2. Once again, we report the need for only minimal harmonisation of the proposed regulations. PT (Comments): Please refer to our answer to Q9. SE (Comments): Sweden opposes the proposals. Capital requirements have a direct impact on IORPs' results. Regulation should not take place at a lower level than Level 1. SI (Comments): We have no evidence to support a revision of the parameters.
Q11: Art. 18 - Even though no comments were received on this Article, do MS have any questions to make and or clarifications to request?	DE (Comments):

Presidency questions	Comments
	No. DK (Comments): Denmark ecco other Member States] and takes a cautious approach to empowering the Commission to amend the solvency margin by delegated acts. ES (Comments): No comments at this time FR (Comments): FR : France has no comments. GR (Comments): EL: We do not have any question or clarification to request. HR (Comments): No. IT (Comments): Please see our comments for Q10. MT (Comments): Malta has no further comments to raise. NL

Presidency questions	Comments
	(Comments): No PL (Comments): PL: no comment PT (Comments): At this stage, PT does not wish to seek additional clarifications in this regard. SI (Comments): No.
Q12: (a) Do MS agree with the overall approach of introducing an obligation to carry out internal stress tests at least every three years, for those IORPs which themselves underwrite covers or provide guarantees? (b) Do MS think that this obligation to carry out ISTs for specific scenarios which are defined in this Article, should be part of the IORPs' Own Risk Assessment (ORA), and their relevant obligation to conduct ISTs within their ORA?	AT (Comments): There is no need for specific requirements for certain products (where IORPs cover some risks). Furthermore, EIOPA already carries out stress tests on a regular basis. BE (Comments): We do not have an opinion on this matter, since such IORPs do not exist in Belgium. DE (Comments): Point (a): Yes. We support such measures, for they provide a valuable tool to assess the financial condition, sustainability and resilience of IORPs.

Presidency questions	Comments
	Point (b): No. Within the ORA, an IORP should consider stress tests and their results regardless whether or not there is an obligation in the style of Article 18a. DK (Comments): Our understanding is that IORPs with a sponsor guarantee are not required to conduct internal stress tests under the current proposal. We would welcome clear confirmation that this interpretation is correct. If, however, the intention is to require internal stress tests also for IORPs with a sponsor guarantee, we would like to understand the reasoning behind this approach. We would be very sceptical of introducing such a requirement, as it would impose unnecessary burdens on IORPs that are already covered by sponsor guarantees. ES (Comments): Article 18 a) requires that IORPs operating pension schemes, where the IORP itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, carry out a stress test at least every three years to assess their ability to meet their obligations towards members and beneficiaries, including under scenarios representing adverse market and demographic developments. In the case of Spain, it is always the sponsoring undertaking, who assumes the risk, as we understand that there would be no need to require such stress tests.

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	Therefore, taking the above into account, we have no observations regarding this point. FR (Comments): **FR: France supports the introduction of mandatory stress tests**. Indeed, - It is an appropriate approach to ensure the prudent management of an IORP's activities and risks. It also appears proportionate to the specific nature of IORPs' activities. It is needed for ensuring both robust prudential requirements and for consumer protection over the long term. - It is also in line with existing practices in certain Member States, notably France, with regard to prudential requirements applicable to IORPs. From a practical point of view, **it is preferable that this be a standalone article,** which triggers the implementation of a convergence plan if the stress test yields negative results. **In this sense, France does not wish to see it integrated into the IORP own-risk assessment.** GR (Comments): EL: (a): We strongly support the introduction of internal stress tests, as it ensures that IORPs underwriting biometric risks or offering guarantees can withstand adverse market or demographic scenarios. (b): We do not have any specific views on this. HR (Comments): We agree with the overall approach of introducing an obligation to carry out internal stress tests at least every three years, for those IORPs which themselves underwrite covers or provide guarantees.

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	We agree that IST could form part of the IORPs' Own Risk Assessment (ORA). However, we caution that the timelines for performing the IST and the ORA differ. While the IST should be performed at least every three years, the proposal provides that the ORA shall be carried out at least every three years and without delay following any significant change in the risk profile of the IORP or of the pension schemes operated by the IORP. Therefore, if the ORA is performed due to a significant change in the risk profile of the IORP or of the pension schemes operated by the IORP, it should not be mandatory to perform the IST as part of that "exceptional" ORA. HU (Comments): HU: Q12 (a): We agree with the planned provision, given that EIOPA regularly conducts stress tests among IORPs. We consider it important that the principle of proportionality should be applied by NCAs taking into account the specificities of national markets. (b): Yes, we consider that ISTs can be part of the ORA. IT (Comments): We support, in principle, the introduction of mandatory stress tests but the requirements are too detailed and may be overly prescriptive. National competent authorities may have diversified needs, and these needs could evolve over time. A more flexible, principle-based approach would be preferable, allowing IORPs and competent authorities to adapt stress testing practices to specific circumstances. LT (Comments):

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	Although in general we support requiring internal stress testing, however we suggest considering some proportionality here, as the requirement would create unreasonable administrative burden for smaller IORPs. LU (Comments): LU is not opposed to the suggested overall approach for introducing internal stress testing for those IORPs that underwrite themselves covers or provide guarantees. This should be read without prejudice to existing national stress testing exercises which, according to our understanding remain a Member State discretion. MT (Comments): (a) Whilst Malta does not have any defined benefit schemes in its jurisdiction, it agrees with the introduction of an obligation to carry out internal stress tests at least every three years for IORPs which underwrite covers or provide guarantees. (b) Malta has no particular comments due to limited experience in this regard. NL (Comments): Internal stress testing can be a useful tool for IORPs underwriting covers and providing guarantees in countries where such a practice does not yet exist and for IORPs where the risks of underwriting covers and/or providing guarantees are material (i.e. risk proportionality is important). In the Netherlands, DB IORPs already run a set of range of adverse market and demographic scenarios. The outcome of this calculation determines their own funds requirements, which usually comes out in the range of 115%-125%. i.e. well above the required minimum solvency margin of Article 17. We

Presidency questions	Comments
	therefore welcome Article 18a(5), which gives MS the option to exempt IORPs with risk-based own fund requirements. With regards to the application of article 18a(2), we think it is important that the article reflects that the risk scenarios assessed should be material, and that if IORPs can demonstrate that the specified risk scenarios are immaterial for them they would not be required to stress test these specific scenarios. For instance, in the Dutch context DC IORPs may be exposed to [limited] biometric risks only because of their coverage of survivors' pensions in case of death prior to the pensionable age while other biometric risks are born by the collective of members and beneficiaries. In this situation, the risks of providing coverage to biometric risks would be immaterial, whereas the specific stress tests would be burdensome without providing useful insights for the IORPs concerned. We agree that Article 28 (ORA) would be a logical place for this IST obligation. This also allows room for the NCA to require IORPs to test alternative scenarios of risks that are considered material if these scenarios better suit the risks concerned than those listed in article 18a(2). PL (Comments): PL: concerns about the provisions on internal stress tests (IST), also taking into account EIOPA's existing proportionality stress tests. We point out the need to adapt the proposed parameters to a specific pension product and the specific situation on the capital markets of the Member States. PT (Comments):

Presidency questions	Comments
	PT does not agree with the introduction of the obligation to carry out IST for the specified set of IORPs suggested by the COM. In our view, this would entail an additional burden that, in many cases, and based on our national experience, will be disproportionate to the materiality of the risk assumed. We believe that integrating such tests into the existing ORA, whenever justified, would be preferable to creating a parallel process, which would allow for enhanced efficiency and minimisation of undue burdens. SE (Comments): Sweden proposes the following rewording: "The competent authorities of the home Member States shall**, when necessary,** require that IORPs..." to exempt smaller IORPs managing sole DB pensions schemes. Sweden has already implemented a risk-based capital requirement aligned with the Solvency II rules. IORPs subject to CR should be exempted from the stress test requirement, in line with article 18a.5. SI (Comments): a) We do not oppose the new requirement, but it can be quite burdensome if the IORP is part of the same year's stress test exercise prepared by EIOPA, as well as carrying out an internal stress test. 10 years time horizon is too long. b) It is the question of the reporting requirement for the results of the internal stress test. ORA must be conducted every year.

Presidency questions	Comments
Q13: Do MS agree with the inclusion of specific scenarios with specific parameters in the Level 1 Legislation? If not, please explain.	AT (Comments): The requirements are too detailed. The assumptions should be adaptable to the specific pension product and the specific capital market situation. Furthermore, we think that projections over ten years might be too long; the results may become uncertain and offer no added value. BE (Comments): We do not have an opinion on this matter, since such IORPs do not exist in Belgium. DE (Comments): We do not agree. Scenarios and parameters should be tailored by the competent authorities taking the characteristics of the national IORP business and the current challenges for the IORPs into account. However, the Directive could characterise different types of scenarios which competent authorities could consider and elaborate, for instance, a baseline scenario and capital market scenarios. <u>Drafting suggestion for Article 18a:</u> a) Revision of paragraphs 2 to 4. b) We prefer the term “projection exercise” instead of stress test. ES (Comments): No comments at this time FR (Comments):

Presidency questions	Comments
	FR: Based on France's 10 years of national experience, the specific parameters proposed by the Commission are not very sharp. It constitutes a minimal scenario. **France is therefore delighted that it is possible to forecast more stringent data. It is in line with a logic of minimal harmonisation, and should be supported. This must therefore address the objections of other Member States. France fully supports those provisions.** GR (Comments): EL: Although we in principle support the inclusion of specific scenarios in Level 1, we would welcome more clarity regarding the adversity of the stress scenarios. HR (Comments): We agree. IT (Comments): Please see our comments to Q12. LT (Comments): We do not think that scenarios with specific parameters should be set at L1. In our view only main stress testing principles should be set at L1 thus allowing some flexibility in specific situations. MT (Comments): Whilst Malta does not have any defined benefit schemes in its jurisdiction, it agrees with the inclusion of specific scenarios with specific parameters.

Presidency questions	Comments
	NL (Comments): We see limitations in prescribing specific stress tests. A better alternative in our view is therefore to require internal stress tests for adverse market and demographic scenarios, where the specific scenarios proposed could be a default but where there is an option to let the NCA prescribe other severe stress test scenarios for (some) IORPs if the NCA is of the view that these alternative scenarios would provide better insight into risks that are material for those IORPs. PL (Comments): PL: no comment PT (Comments): PT favours foreseeing specific baseline scenarios, recognising its benefits in facilitating minimum comparability, with MS remaining free to require projections under additional scenarios. Nonetheless, we question the suitability of the ones proposed by the COM to adequately quantify incurred risks, most notably those associated with the granting of financial guarantees from the perspective of the pension fund management entities. We fail to understand how adverse scenarios based on interest rates and mortality rates variations may prove relevant in this regard, welcoming further debating potential alternatives. SI (Comments): These scenarios seem relevant today, but will they also be relevant in several years' time?

Presidency questions	Comments
Q14: With regards to the "waiver" for carrying out these ITSs, in case the IORPs are already required under national law to hold "risk-based" regulatory own funds, in excess of the required solvency margin referred to in Article 17, do MS think that the term "risk-based" should be further specified in the proposal?	BE (Comments): We do not have an opinion on this matter, since such IORPs do not exist in Belgium. BG (Comments): BG: The term "risk-based" should be further specified to ensure consistent interpretation and application across MS DE (Comments): No remarks. ES (Comments): No comments at this time FR (Comments): FR: With regard to the waiver, France considers that the requirement to conduct stress tests is a very robust approach that should be implemented in all Member States. **France was therefore initially cautious about this waiver.** Yet, **France also understands that some Member States already impose additional regulatory own funds** in excess of the solvency margin, on an ongoing basis and based on robust and proven models. **Such a situation must be acknowledged.**

Presidency questions	Comments
	It is however important to ensure that this waiver does not allow Member States to escape the obligation to conduct stress tests without a truly robust prudential framework. Indeed, without further specification, a risk-based approach may provide no guarantee of adequacy or prudence, justifying the non-application of stress tests. It is important that the additionality of risk-based regulatory own funds is real and corresponds to the effects of stress tests. It should have comparable effects. **France is therefore ready to work with the Presidency and interested Member States to strengthen paragraph 5, along that line**. It shall be ensured that paragraph 5 does not weaken the proposed internal stress test requirement. GR (Comments): EL: Although we could in principle support the COM proposal, it should be clarified that the risk-based calculations should be at least as severe as the stress test shocks described above. HR (Comments): We support the proposal to further specify the term “risk-based” in the proposal as it is not included in Art. 17. MT (Comments): Malta agrees with a waiver to carry out Internal Stress Tests (ISTs) where IORP are already required under national law to hold “risk-based” regulatory own funds. Malta also agrees that the term “risk-based” should be further specified in the proposal. NL (Comments):

Presidency questions	Comments
	In the Dutch context it is clear how this waiver should be applied. However, we are open to explore additional wording to clarify that regulatory own fund requirements are based on robust and similar risk-based stress scenarios, containing at least market and longevity risks, and adequate for a wide range of adverse and severe market and demographic scenarios, as in the proposed stress tests in Article 18a and/or a reference to the adequacy of the risk-based own funds. PL (Comments): PL: no comment PT (Comments): PT would welcome further densification on the triggering of the waiver mentioned under Article 18a(5) to better ensure legal certainty. SE (Comments): No suggestion but the Swedish risk-based capital requirement may serve as inspiration. The CR for IORPs is built on assumptions from S-II with some adjustments to avoid arbitrage where companies adhere to both IORP and S-II. SI (Comments): We suggest deleting new paragraph 5, as we believe that all IORPs should perform internal stress tests, regardless of how the capital requirements are calculated. Stress tests demonstrate the ability to withstand shocks.

Presidency questions	Comments
Q15: Do MS agree with the Commission's proposal to shift from a prudent person rule framework to a risk-based prudent person principle? If not, please elaborate/justify your position.	BE (Comments): In Belgium, the prudent person principle and the risk-based approach is already fully applied and no additional quantitative restrictions are imposed. We therefore agree with this proposal. BG (Comments): BG: We believe IORP II in general and the prudent person rule itself are sufficiently risk based. DE (Comments): We agree but for two aspects. a) See Q16. b) According to the new paragraph 1a, an assessment of overall funding needs is required. From our point of view, funding is not related to investments. In addition, the overall funding needs are already regarded in the ORA. We propose to delete this assessment. <u>Drafting suggestion for Article 19 paragraph 1a:</u> '1a. Member States shall require that, with respect to the whole portfolio of assets, IORPs only invest in assets and instruments whose risks the IORP concerned is able to properly identify, measure, monitor, manage, control and report, and appropriately take into account in ~~the assessment of its overall funding needs and~~ the assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits in accordance with Article 28.' ES (Comments):

Presidency questions	Comments
	We have serious concerns regarding the implications that this shift from the traditional prudent person rule to the prudent person principle would have in relation to IORPs. We do not oppose risk-based management, but we also do not support the idea that an IORP should be free to invest in any type of asset without any limitations, since we believe that certain limits—both on the types of assets eligible for investment and on diversification and concentration, set in advance—not only for cases where the investment risk is borne by the members and beneficiaries, but also for defined benefit schemes, are necessary to protect the interests of members and beneficiaries. It should not be forgotten that in other areas, such as insurance—where the prudent person principle has been successfully implemented—there is a requirement to apply capital charges to offset riskier investments, something that does not occur in the IORP sector. Finally, we would like to add that relying on a list of eligible assets and quantitative investment limit is just and additional measure, but not the only one. In any case, the list of eligible assets, how is regulated in Spanish law, is quite broad and is only intended to prevent investment in assets that pose excessive risk for members and beneficiaries. FR (Comments): FR: **France fully supports the change from a prudent person rule framework to a risk-based prudent person principle.** Indeed, France believes that this proposal meets the objective of strengthening the financial performance of IORPs, with more appropriate supervision and rules, while maintaining a high level of protection.

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	France notes that the prudent person principle nevertheless preserves a number of minimum criteria for sound management listed in (a) to (g), which France supports. Yet, while the shift from a rule to a principle is welcome, France is considering the advisability of introducing a **principle of congruence**, which aims to ensure that there is equivalent representation between liabilities and assets in terms of currency denomination. This is one of the key principles of sound prudential management, which reduces risks – particularly liquidity risks – while ensuring a high level of investment freedom. This principle was already recognised in a looser form in Article 19(6)(b) of the IORP II Directive and already existed in Solvency I as a basic principle. It is still provided for in the French national law for insurance companies not covered by Solvency 2 provisions (see Article R.332-1 of the French Insurance Code). Subject to further analysis currently underway, it may be appropriate to add it to the rules already provided for in criteria (a) to (g). **What is the opinion of the Commission and EIOPA on this subject? Has this been considered?** On a technical note, regarding paragraph 1a, France questions the need for the terms 'monitor, manage, control', which seem redundant. France would welcome clarifications from the Commission. GR (Comments): EL: In principle, we see merit in the Commission's proposal, as the shift to a risk-based prudent person principle nudges IORPs towards more effective and efficient investment policies, that combine risk mitigation with long-term return objectives. HR (Comments): HR, in principle, supports the shift from a prudent person rule framework to a risk-based prudent person principle. IT

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	(Comments): In principle we could accept the shift from the prudent person rule to the prudent person principle, but the concrete differences are not clear. We see the need for more clarification. LT (Comments): We can agree with the Commission's proposal. In principle we support shifting to prudent person principle as suggested in Commission's proposal. LU (Comments): LU welcomes the shift from the prudent person rule to the prudent person principle allowing for more flexibility for IORPs to invest in a broader array of asset classes. MT (Comments): Malta agrees with the shift to the prudent person rule framework. NL (Comments): Yes we agree. It is standing practice in the Netherlands that the IORP in principle decides the investment strategy, in the best interest of the participants. We are of the opinion that the IORP is best qualified to determine this strategy, while the supervisor can intervene when it is necessary. PL (Comments): PL: these issues should continue to fall within the competence of the Member States. Quantitative limits should remain available at the level of national law. Once again, we point to the need to maintain the objective of the IORP

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	Directive, which is a minimum harmonisation of regulations. We emphasise the need for greater flexibility. PT (Comments): PT is aligned with the COM intention to transition towards the prudent person principle as the core standard governing IORP investments. We believe this approach is consistent with the long-term nature of pension liabilities and modern supervisory practice, allowing enough leeway for providers in managing their portfolios and achieving better returns for their members. SE (Comments): No comments, SE has already implemented PPP and risk-based capital requirements to cater to the increased risks in the IORPs portfolios. SI (Comments): Yes, we have no problem shifting to PPP. SK (Comments): Comment: Yes – in general – further comments in Q16.
Q16: Do MS agree with the Commission's proposal to reduce the scope for national quantitative limits? If not, please elaborate/justify your position. If not, please elaborate/justify your position and clarify which type of limit should be allowed.	BE (Comments): We agree since the prudent person principle is already fully applied and no additional quantitative restrictions are imposed. BG

Presidency questions	Comments
	(Comments): *BG: We do not support the proposed amendment to Article 19(6)(7)(8). We believe that the option for Member States to be able to set national quantitative limits should remain as they play an important role in diversification of investments and risk mitigation. In terms of legal certainty these limits should be set in the law.* DE (Comments): No, we do not agree. Quantitative limits can be an efficient and simple supervisory tool without hindering IORPs to run a powerful investment policy. We understand that the prudent person principle and the internal stress test (Article 18a) may help IORPs achieve better returns and assess their ability to meet the obligations towards members and beneficiaries. However, we think that an additional safeguard on an ongoing basis is required. From our point of view, the MS option for investment limits presents a convenient tool to secure the framework continously. The MS option is well established and does not produce additional burden. Therefore, it should be kept. We notice that other regulatory frameworks are not limited to the prudent person principle and stress testing either. Drafting suggestion for Article 19 paragraph 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. ~~Any such rules shall be applied only~~**For pension schemes** where the investment risk is borne by the members and beneficiaries~~. However, in such cases,~~ such rules **shall** IORPs ~~shall~~ not ~~be prevented~~ **prevent** from:

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	(a) ... (b) ... (c) ... (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. **For pension schemes with a long-term interest rate guarantee where the IORPs bear the investment risk and themselves provide for the guarantee, the point (a) of the second subparagraph applies with a percentage of 35 % instead of 70 %.**' ES (Comments): In line with what was mentioned above, we are very concerned about the Commission's proposal to reduce the scope for national quantitative limits, and in particular the removal of the phrase "including quantitative rules", in article 19 paragraph 6 of the proposal, since Member States should in some way be able to quantitatively limit pension funds' investment (Not only in DC but in DB too)in certain riskier assets, always without undermining the possibility of profitable investments, but above all protecting the interests of members and beneficiaries, given that this is, let us not forget, a retirement product. Despite the above, we have doubts about the implications of this proposal. Does it mean a prohibition on regulating eligible investment assets? Does it imply a ban on setting diversification percentages for specific assets beyond the 70% regulated in this article? Does it imply not setting concentration limits for certain assets? In such cases, we strongly oppose to the deletion of the phrase. FR (Comments):

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	FR: **France is opposed to the proposed changes to national quantitative limits. These amendments must be deleted. France is not at all convinced.** The robustness of the framework would then be based almost exclusively on the prudent person principle. As France stated in ECOFIN, Member States must be able to continue to define what constitutes a minimum safety net in terms of investment rules. Furthermore: - First, this restriction proposal is so far unjustified as Member States have not received any impact assessment. - Second, France deems it is unnecessary. The limits on investments in alternative assets set out in the regulation cannot be considered "overly restrictive"-they are rather last resort safety nets that are most of the time never reached. For example, French IORPs cannot invest more than 30% of their assets in unlisted assets. In practice, this threshold is very far from being reached, and very unlikely to be, due to the risks (market risks but also liquidity risk) related to this type of investments. In the event that the Commission would provide a detailed study of the existing rules and their impact (advantages and restrictions on IORPs investments) and that the Commission were able to demonstrate an effective restriction, France would only be prepared to modify the parameters set out in the existing article without changing the framework. **The removal of the possibility of establishing rules on an individual basis also appears disproportionate (paragraph 7 deletion).** **France also opposes the transfer of power from Member States to national competent authorities, as provided for in the amendments at the beginning of paragraph 6. This right, regardless of its scope, must remain a right of Member States under national law and not be an additional power of supervisory authorities.**

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	On a more technical note, France would welcome clarification from the Commission on why it proposes to delete paragraph 8 - whereas this rule already made it impossible for host Member States to lay down rules on investment for cross-border activities. GR (Comments): EL: We do not support the removal of MS option to impose quantitative investment limits, considering that the capital requirements under the Directive are not fully risk-based, which potentially increases unwanted exposure to investment risks. We also do not support limiting the scope of national authorities to lay down more detailed investment rules only for IORPs where the investment risk is borne by the members and beneficiaries. Moreover, we do not support deleting national authorities' competence to apply more stringent investment rules on an individual basis. HR (Comments): Although HR generally agrees with the introduction of a risk-based prudent person principle, we are of the view that Member States should retain the discretionary right to lay down more detailed or quantitative rules where these are prudentially justified also for defined benefit schemes. Quantitative limits can serve as prudential safety nets and may enhance legal certainty and supervisory enforceability. Allowing such discretion would also respect the principle of subsidiarity and enable authorities to address specific market features or systemic risks. Provided they are proportionate such measures can complement, rather than undermine the core prudent person principle. HU (Comments): HU: We do not agree. We consider it important that the Directive includes the possibility for Member States to set national quantitative limits in their own

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	competence, in the light of the specificities of their national markets, if they consider it necessary. IORPs are also part of the social security system of the Member State, therefore it is important to retain the possibility of national regulation also with regard to investments. IT (Comments): We prefer to maintain the current version of paragraphs 6 and 7 of Article 19, which permit the introduction of additional limitations both for DC and DB **for prudential reasons**. In this regard, we think that it is **the MS**, and not the NCA, that should have the power to introduce additional limits. Furthermore, we prefer to maintain paragraph 7 of Article 19 that explicitly clarifies the power of the NCA to impose additional limits to an IORP on an **individual basis**, provided they are prudentially justified. LT (Comments): We have concerns regarding the restriction for MS/NCA to set a quantitative limits/more detailed investment rules, as this could undermine the consumer protection goals considering national specificities. LU (Comments): We agree to reduce the scope for quantitative limits. We are of the view, that with broader eligible investment possibilities, better outcomes for members and beneficiaries can be achieved in particular considering the long-term perspective of occupational pension provision. In our understanding, the switch from a rules-based system to a more principles based system should not be misread as a ban on quantitative limits all together.

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	More detailed rules can still be introduced if prudentially justified under paragraph 6 of article 19. LV (Comments): Nationally established investment limits and restrictions should unquestionably remain in place for defined contribution (DC) schemes, where members bear the investment risk. MT (Comments): Malta is concerned to note the addition of paragraph 7, which would not allow Member States to be able to include national specific rules. NL (Comments): Yes we agree PL (Comments): PL: these issues should continue to fall within the competence of the Member States. Quantitative limits should remain available at the level of national law. Once again, we point to the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of regulations. We emphasise the need for greater flexibility. PT (Comments): PT disagrees with the circumscribed approach to only impose more stringent or individualised national investment rules to cases where the risk is borne by members and beneficiaries, as per the revised Article 19(6).

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	In our view, this restriction does not adequately account for the cases in which the same pension fund manages various schemes (a common practice in PT), resulting in potential unequal treatment and unlevel playing field between schemes of the same nature managed within a single purpose fund. In practice, a fund that simultaneously manages a DB and DC scheme, despite the adequate segregation of liabilities between the schemes, may be subject to the application of additional national rules in its totality, considering that Article 19(6) does not refer to a full bearing of investment risk by members and beneficiaries. This results in DB schemes being covered by national rules in jointly managed funds, in a setting that bars the application of such rules to DB schemes in single funds. Therefore, the national leeway granted under Article 19(6) should not be conditioned by the bearing of investment risk, but rather when it is prudently justified and at the discretion of competent authorities. SE (Comments): Some flexibility is important so that competent authorities can allow adjustments where and when it may be necessary. SI (Comments): National quantitative limits are for safeguarding of members rights important also because the capital requirements are not risk based. SK (Comments): Comment: SK requests to maintain the MS's option to establish stricter investment rules for IORPs as a prudential safety net. According to our NCA relaxing investment limits without strengthening supervisory powers may have a

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	negative impact on the performance of supervision. Examples from other sectors of the financial market, without explicit investment restrictions, have resulted in an inappropriate investment. Based on experience it is more appropriate to have explicitly established rules (at least on some asset classes – riskier/unlisted/private equity etc.) in national legislation, with which supervised entities identify themselves and on the basis of which they formulate investment strategy. Taking into account the nature of investors – retail/non-qualified – this change appears to be a suboptimal solution. SK also opposes the transfer of powers from MS to NCAs (article 19 para 6) – this competence must remain a right of MS (under national law) and not an additional power of supervisory authority.
Q17: Do MS agree with the Commission's proposal to embed a sustainability framework into IORPs' investment governance and introduce requirements for sustainability preferences of members and beneficiaries?	BE (Comments): In the majority of Belgian pension schemes, members are automatically enrolled and have no investment choices. Moreover, social partners play an active role in the management of IORPs. In that context, member representatives should be considered as a valid proxy for expressing member's sustainability preferences. We consider therefore the second part of the paragraph 1c essential, i.e. "*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* », but propose to further clarify the rol of member's representatives. DRAFTING proposal Art. 19 (1c): "*Investment decisions of IORPs shall reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences and to the extent they are consistent with the investment principles set out in paragraph 1.* ***Preferences may be gathered at collective level and expressed by the representatives of members and beneficiaries.***"

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	We also would like to highlight that assets are collectively managed and thus it will not be possible to invest according to individual's preferences. Furthermore, care must be taken to ensure that the changes made as part of the IORP review are consistent with those made as part of the SFDR review. If the reference to Art. 2, point (17) of SFDR that is mentioned in Art. 19 (1d) (b) is abolished as part of the SFDR review, this provision must also be amended. BG (Comments): BG: We do not agree with this proposal as this is not a retail product or an individual portfolio management. The assets of the IORPs are managed collectively. In addition, the contract is between the employer and the IORP. Members could not convey their individual sustainability preferences. Given this, IORPs should maintain their discretion whether and how to integrate sustainability factors, as provided by the current provisions of IORP II DE (Comments): We agree given that some clarification is supplemented in the proposal. In particular, any implementation of sustainability preferences of members and beneficiaries must be in line with the foundation of the pension scheme which includes aspects such as asset pools (for example, the scheme may have just one pool) and sustainability preferences determined by collective bargaining. To avoid burden, the Directive should allow for as simple methods as possible to gauge the sustainability preferences (for example, representatives of members and beneficiaries (if available) could decide on the preferences to be applied). Drafting suggestion for Article 19 paragraph 1c: '1c. Member States shall require that investment decisions of IORPs reflect the sustainability preferences of members and beneficiaries where IORPs are

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	able to gauge those membership preferences and to the extent those preferences are consistent **with the foundation of the pension scheme and** with the investment principles set out in paragraph 1. **Instead of membership preferences, the IORP may apply the first sentence to the sustainability preferences of the representatives of members and beneficiaries, if available.**' ES (Comments): Regarding sustainability, we would like to highlight the importance of maintaining alignment with the Sustainable Finance Disclosure Regulation (SFDR), which is currently under review. In this respect, any sustainability-related terms or requirements should refer directly to that framework, thereby avoiding unnecessary duplication and inconsistencies. Furthermore, the reference to the integration of the sustainability preferences of members and beneficiaries contained in Article 19(1)(c) and (d) should be deleted or, at least, reformulated. Within the occupational pension system in many countries, such as Spain, the legal design of the second pillar includes a governance body (the Supervisory Committee, in Spain) composed of representatives of members and beneficiaries, which is the body responsible—together with the management company—for defining the investment policy. Accordingly, the integration of sustainability preferences is not structured at the level of each individual member, but rather collectively for all members/beneficiaries of the pension plan, through the decision-making process carried out by their representatives on the Supervisory Committee. Under the current national regulatory framework in many countries, a governance system is already in place that allows sustainability preferences of members and beneficiaries to be integrated into the investment policy of

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	IORPs, without the need to impose additional obligations that could prove redundant or difficult to reconcile with the governance structure specific to the second pillar. Additionally, it should be borne in mind that occupational pension schemes are not commercialised in the same way as retail investment products. Membership generally derives from the employment relationship or from collective bargaining, rather than from an individual advisory or sales process. Therefore, imposing such an approach would introduce a regulatory burden that is misaligned with their nature FR (Comments): FR: Regarding sustainability requirements, France plans to come back to the Presidency at a later stage, pending further analysis. France would welcome clarification from the Commission on the interaction with other European directives, notably the SFDR ongoing review. GR (Comments): EL: Although in principle we could support this proposal, we have concerns about its practical implementation, e.g. in defined benefit schemes, or in defined contribution schemes where the members and beneficiaries cannot select their own investments. Last, in para. 1d(b) of art. 19, there is a reference to art. 2(17) of SFDR, which under the new Commission's proposal is deleted. HR (Comments): We can accept the Commission's proposal to embed a sustainability framework into IORPs' investment governance. However, we caution that the proposed amendments should be aligned with the ongoing revisions of the SFDR. We

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	would also welcome clarification regarding the requirement that investment decisions of IORPs reflect the sustainability preferences of members and beneficiaries – in particular, whether the IORP should collect information on sustainability preferences directly from members (on an individual basis) or from the sponsoring undertaking. IT (Comments): We note that the provisions of paragraphs 1c and 1d of Article 19 are not consistent with the collective nature of IORPs investments, as they presume that IORPs carry out individual portfolio management in relation to such sustainability preferences . The text should reflect that the IORP invests the assets collectively on behalf of all members. In general, on sustainability preferences, we would like to remind that EIOPA, in its Advice, states that "*In some Member States, IORPs also provide participants with a number of options with different investment profiles, but in others it is more common for IORPs to have one collective investment policy for all participants, who are likely to have different sustainability preferences. The sustainability preferences of the participants may not always be easy to determine. But where they can be determined they should take priority in case they differ from the IORP's own sustainability preferences. Nevertheless, IORPs should not take the membership preferences as instruction, but rather as a key input into an investment strategy that should be consistent with the prudent person rule. Investment decisions of IORPs should reflect the sustainability preferences of members and beneficiaries, where IORPs can gauge those membership preferences*". Coherently, we believe that in the DC pension systems where IORPs offer a range of investment options for members to choose from, conceptually, this structure makes it possible for members to make pension investment choices with regard to their own needs and preferences, also in relation to sustainability.

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	Therefore, what is important to guarantee is that IORPs provide members with a choice between multiple investment options sufficiently diversified in terms of risk exposure in order to match members' individual preferences. LT (Comments): We believe that flexibility should be maintained, because in most cases investing is collective and there is no way to assess personal preferences. In general, we support including sustainability concerns, however the proposed changes/terms should be aligned with ongoing SFDR revision and could be limited to disclosure or sustainability risk management requirements. We have strong concerns regarding how the assessment of sustainability preferences of members and beneficiaries could be done in practise, as well of the benefits it brings compared to potential administrative burden. LU (Comments): LU does not oppose to embed a sustainability framework into IORP's investment governance. However, in order to avoid any duplication or unintended deviations with SFDR, due consideration should be given to SFDR 2.0, once its final text has been adopted. LV (Comments): Introducing a mandatory requirement for pension funds to assess and incorporate members' sustainability preferences would result in additional administrative tasks and operational burden. Given the uncertainty about whether this would produce tangible long-term gains in accumulated supplementary pension capital, we have reservations about its proportional added value. If sustainability factors are already integrated into the investment policy, there is no need to introduce separate requirements relating to the sustainability preferences of members and beneficiaries. In addition, in

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	pension systems where beneficiaries can freely transfer their pension capital from one pension fund to another already have a possibility to choose funds with sustainability aspects integrated in the investment policies this requirement does not add value. MT (Comments): Malta agrees with the proposal to embed a sustainability framework into IORPs' investment governance and introduce requirements for sustainability preferences of members and beneficiaries. NL (Comments): We agree with introducing sustainability considerations in the prudent person principle. However, we think it would be helpful to clarify that there are several possible methods to gauge the sustainability preferences of members/beneficiaries (i.e. not just surveys among individual members/beneficiaries). We would also like to note that in practice there may be challenges (e.g. what should the IORP do if the preferences within the population are very different and investments are made collectively). The description of "sustainability preference" in 1d stems from the idea that there is individual choice on the investment portfolio (and its degree of sustainability). However, in the Netherlands investments are made collectively, which means the sustainability preferences of members/beneficiaries collectively would determine the ESG-profile of the collective investment portfolio. Because of this, we believe the description of "sustainability preference" in 1c could be improved by adding 'implement these preferences in the investment strategies'. In that case Article 19(1c) would read:

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	1c. Member States shall require that investment decisions of IORPs reflect the sustainability preferences of members and beneficiaries, where IORPs are able to gauge those membership preferences **and implement these preferences in the investment strategies** to the extent those preferences are consistent with the investment principles set out in paragraph 1. PL (Comments): PL: these issues should continue to fall within the competence of the Member States. Quantitative limits should remain available at the level of national law. Once again, we point to the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of regulations. We emphasise the need for greater flexibility. PT (Comments): PT can concur in principle with integrating sustainability risks into investment governance but foresee potential challenges for the consideration of sustainability preferences. Collective investment structures usually verifiable in IORPs, where assets are managed on a pooled basis, may prevent this possibility altogether, or impose additional complexity and burdens that can result in additional costs to fragment investment portfolios. Besides, expressed preferences may evolve over time, compromising in practice continuous adaptability. Therefore, we advise on only focusing on the assessment of sustainability risks, as those can be managed collectively and do not depend on continuous intakes from sponsors or members. SE (Comments):

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	SE notes that the application of Article 19(1)(c) is unclear. It is practically challenging for IORPs to take account of each member's individual sustainability preferences, as investments are made on a collective basis. The relationship between this requirement and the IORP's overall investment guidelines also requires clarification. SE further requests clarification of what is meant by sustainability preferences being taken into account to the extent the IORPs are able to gauge them. Without clear interpretative guidance, there is a risk of creating an uneven playing field. Any amendments to IORP II should also take into account the ongoing review of the EU sustainability framework, including the SFDR. To avoid increased complexity and reduced economies of scale, SE considers that a more general and principle- based sustainability provision would be preferable. SI (Comments): We are not against sustainability preferences of members, although it should be done on the pension fund level as investments are chosen on the level of pension fund and not on individual. However we are wondering if this is in line with prudent person principle. SK (Comments): Comment: SK requires that IORPs retain discretionary powers to decide whether to take sustainability factors into account in their investment decisions (paragraph 1 (b)).

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	The obligation to take into account preferences of members and beneficiaries increases the administrative burden and costs for IORPs, while the mandatory consideration of sustainability factors may in some cases conflict with the obligation to act in the best interests of clients – the primary objective of IORPs should be to ensure long-term returns at an appropriate level of risk. The introduction of products that take sustainability risks into account should be left to the decision of the entities concerned. The assessment of sustainability factors in the context of investment decisions can also be challenging due to the existence of different methodologies from several agencies and data providers, which may result in a non-uniform approach. In relation to the set of new rules in paragraphs 1c and 1d – the provisions shall not automatically oblige MS to require IORPs to identify members' preferences in relation to sustainability and subsequently reflect them. The acquisition of financial instruments in IORPs in SK is not carried out for an individual client, but in relation to the entire fund in which a larger number of clients have invested, and whose preferences may differ significantly. In pension systems where it is not possible to obtain this information (or it would be particularly administratively and financially burdensome, including in relation to its subsequent updating and storage), institutions IORPs should not be subject to such an obligation.
Q18: Do MS support the proposed reinforcement of governance, internal control, and conflictof-interest management proposed in article 21?	BE (Comments): We support in general the proposed reinforcement of governance, internal control, and conflict- of-interest management, but we notice the mixed use of "**management or supervisory body", "administrative, management or supervisory body" and "persons who effectively run"** in the same article and throughout the proposal. This different use creates confusion. We consider that these terms mean the same, i.e. the body/persons that are responsible for the management of the IORP.

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	We therefore propose to replace the different terms throughout the Directive with "**administrative, management or supervisory body**" since this is a known term in financial regulation. As such the requirements of the Directive would clearly apply to the AMSB and not, where it exists, the daily management. Such daily management often exists underneath the AMSB and may consist of only 1 person for small IORPs in Belgium. BG (Comments): BG: We support in general the proposed strengthening of governance, internal control, and conflict-of-interest management in general with the exception of ESG rules, where IORPs should preserve their discretion, as stated in the answer to Q17 and gender equality objectives. DE (Comments): We support reinforcement. However, we see room for simplification to avoid unnecessary administrative burden. DK (Comments): -Denmark is not strongly opposed to the proposed changes regarding governance, compliance, and conflict of interest management. However, we note that the proposed reinforcement of governance and internal controls may increase administrative burdens for IORPs. We encourage careful assessment of whether requirements such as a dedicated compliance function are proportionate and necessary.

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	It is important that any new obligations are based on the need to ensure the prudent operation of the IORP for the protection of members and beneficiaries. ES (Comments): In principle we support the proposal, but in cases such as in Spain, where there is a management company responsible for managing the pension fund and a supervisory body such as the Supervisory Committee, would it be necessary to extend the governance requirements to the latter, or whether it would be sufficient to apply them only to the management company, as was the case under the current regulation??We do not support the idea of extending this strengthening of governance beyond the management company in our case, in cases where it may result in duplication. FR (Comments): FR: **France fully supports**, including the need to strictly have two persons who effectively run the undertaking. Regarding ESG, France plans to come back to the Presidency at a later stage, pending further analysis. France would welcome clarification from the Commission on the interaction with other European directives, notably the SFDR ongoing review. GR (Comments): EL: In general, we support the Commission's proposed reinforcement of the general governance requirements, as we see this as a core element of effective governance, provided that it is properly adjusted and remains proportionate to the nature, scale and complexity of the IORP.

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	HR (Comments): We support the proposal. IT (Comments): In general we support the reinforcement of the system of governance, but we have concerns about the deletion of the MS possibility to allow only one person to effectively run the IORP. In addition, we see the need to clarify what we intend for "person who effectively runs the IORP". LT (Comments): We believe that it is essential that governance requirements are tailored to the size, nature, scale and complexity of each IORP. Small IORPs often operate with limited administrative capacity, so a one-size-fits-all approach can create a disproportionate administrative burden for small IORPs. Application of proportionality principal should be considered. LU (Comments): LU agrees that proper governance requirements contribute to credibility and trust in the IORP sector. Nevertheless, we also need to acknowledge that IORPs operate within legal, cultural, and structural frameworks that differ significantly across countries. Proportionality is warranted to ensure that governance requirements are tailored to the size, nature, scale, and complexity of each IORP. Smaller IORPs often operate with limited administrative capacity;

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	Applying one-size-fits all rules which are adapted for very large schemes creates disproportionate burdens for smaller IORPs without improving member outcomes. MT (Comments): Malta supports the proposed reinforcement of governance, internal control, and conflict of interest management proposed in article 21. Malta is of the view that a requirement should be introduced requiring the IORP to take any necessary measures to avoid conflicts of interest. NL (Comments): Yes we agree with the proposals. Considering that the IORP management has significant responsibilities regarding the investment strategy it is imperative that the management is qualified and sound. This applies in the same measure to small and larger IORPs; Where small IORPs cannot meet the requirements, consolidation should be considered. PL (Comments): PL: the proposed changes will entail additional administrative burdens, in particular in the compliance function. We postulate that caution should be exercised when introducing statutory body requirements for IORPs with objectives other than maximum efficiency in IORP management (e.g. gender parity, transparency of recruitment and pay), especially as their implementation may be impossible to meet in the case of small IORPs. Once again, we point out the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of rules. PT (Comments):

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	PT is broadly aligned with the objective of strengthening governance standards, internal control mechanisms and the management of conflicts of interest, as sound governance is key to the protection of members and beneficiaries. We note most of the COM proposals are already foreseen in our national regime. SE (Comments): SE does not oppose the proposed amendments in art 21(Q18-20) in relation to DC-IORPS that actively manage investments in behalf of members. However, the proposed amendments are not proportionate for pension foundations. Pension foundations act solely as security for the employer's pension commitments and bear no liabilities or risks towards members or beneficiaries. The strengthened governance requirements in Article 21(1), including mandatory integration of ESG factors and regular internal reviews of the management body's composition and effectiveness, are tailored to IORPs that actively manage retirement outcomes. This approach does not reflect the nature, purpose or risk profile of pension foundations. SE therefore proposes that Article 21(1) be amended to ensure appropriate proportionality. The requirements on ESG integration and internal effectiveness reviews should not apply, or should apply in a simplified manner, to IORPs that do not bear financial obligations towards beneficiaries and do not actively manage retirement benefits. For such IORPs, it should be sufficient that the governance system ensures prudent asset management in line with the prudent person principle. Member States should be explicitly permitted to disapply or adapt these requirements for IORPs whose function is limited to securing the employer's pension liabilities. SI

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	(Comments): Yes, together with proportionality needed for small IORPs. SK (Comments): Comment: SK supports proposed reinforcements.
Q19: Do MS agree with introducing a dedicated compliance function? If no, please explain/elaborate further.	BE (Comments): Although the Belgian regulatory framework includes a dedicated compliance function, this new requirement is difficult to understand in the context of simplification and burden reduction. BG (Comments): BG: In our view this requirement is not proportionate. The compliance function depending on the size of the IORP could also be part of the functions of the legal department or the internal control unit of the IORP. DE (Comments): We are not in favor of a mandatory compliance function for all IORPs. However, we are open to discuss a more proportional approach. ES (Comments): We do agree in principle.

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	FR (Comments): FR: **France fully supports**. The proposed wording is fully aligned with the wording proposed in the Solvency 2 directive. GR (Comments): EL: We support the introduction of a dedicated compliance function. We, further, suggest amending the wording of Article 21(3) to explicitly include the obligation for IORPs to establish a policy regarding the compliance function. In addition, we propose that Article 24 is revised to clearly recognize the compliance function as a key function that IORPs should have in place. However, we are skeptical about the removal of the option for small IORPs to be run by a single person. HR (Comments): We agree with the proposal. IT (Comments): Italy acknowledges that a compliance activity is part of a sound control system but does not see the need to introduce a new key function dedicated to the compliance. Such requirement might be disproportionate for some IORPs. ***Drafting suggestions:*** 4. Member States shall ensure that IORPs have in place an effective internal control system. That system shall have administrative and accounting procedures, an internal control framework **including compliance**, and appropriate reporting arrangements at all levels of the IORP ~~and a compliance function~~.

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	4a. The compliance ~~function~~ **activity** shall include advising the administrative, management or supervisory body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also assess the possible impact of any changes in the legal environment on the operations of the IORP concerned and shall identify and assess compliance risk. LT (Comments): We could support the obligation for large IORPS to have a dedicated compliance function, however we are concerned that the new requirements may create a significant administrative burden for small IORPS. Application of proportionality principal should be considered. LU (Comments): LU refers to the comment on Q.18. A dedicated compliance function in particular will put more adminsitrative burden on smaller sized IORPs. LV (Comments): We would like to express our concerns regarding the additional administrative burden arising from the proposed requirements. In particular, the expansion of the compliance function may prove disproportionately challenging for smaller IORPs, which often operate with limited resources and streamlined governance structures. Ensuring full compliance could therefore impose significant operational and financial pressure on these entities, potentially affecting their overall efficiency. It is important to note that such a dedicated compliance function has not previously been an obligatory requirement for IORPs. MT (Comments):

Presidency questions	Comments
	Malta agrees with introducing a dedicated compliance function. NL (Comments): Yes we agree with the proposal PL (Comments): PL: the proposed changes will entail additional administrative burdens, in particular in the compliance function. We postulate that caution should be exercised when introducing statutory body requirements for IORPs with objectives other than maximum efficiency in IORP management (e.g. gender parity, transparency of recruitment and pay), especially as their implementation may be impossible to meet in the case of small IORPs. Once again, we point out the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of rules. PT (Comments): At this stage, PT does not identify constrains in moving forward as suggested by the COM. SE (Comments): Regarding the need for proportionality for pension foundations see Q18. The amendments would require all IORPs to establish a formally designated and structurally separated compliance function with defined advisory and monitoring tasks. For pension foundations — typically small entities with simple governance structures and materially lower compliance risk — this would impose disproportionate costs without corresponding benefits for beneficiary protection.

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	SE therefore proposes that Article 21(4) be amended to allow IORPs without financial liabilities towards beneficiaries to perform compliance tasks within their existing governance framework, without a mandatory separate compliance function. SI (Comments): Yes, together with proportionality for small IORPs. SK (Comments): Comment: Yes.
Q20: Do MS consider the enhanced requirements for managing conflicts of interest to be appropriate? Should other areas, such as service provider relationships, be addressed based on MS's experience?	BE (Comments): We agree with the proposal. BG (Comments): BG: Yes, we consider the proposed requirements appropriate and believe the provisions of the directive could be further enhanced by adding a definition of conflict of interests, ensuring uniform understanding and application of the respective requirements. DE (Comments): See answer to Q18. ES (Comments):

Presidency questions	Comments
	No observations so far. FR (Comments): FR: France agrees. GR (Comments): EL: We support the improved identification and management of conflicts of interest. HR (Comments): We consider the enhanced requirements for managing conflicts of interest to be appropriate. IT (Comments): As regards the new paragraph (7) inserted in Article 21, we consider preferable the introduction of a **general rule** requiring the IORP to take any necessary measures to avoid and manage **all** conflicts of interest, including those arising from service providers. LU (Comments): LU refers to the comment on Q.18 MT (Comments): Malta agrees with the enhanced requirements for managing conflicts of interest. NL

Presidency questions	Comments
	(Comments): Yes we consider the requirements appropriate PL (Comments): PL: the proposed changes will entail additional administrative burdens, in particular in the compliance function. We postulate that caution should be exercised when introducing statutory body requirements for IORPs with objectives other than maximum efficiency in IORP management (e.g. gender parity, transparency of recruitment and pay), especially as their implementation may be impossible to meet in the case of small IORPs. Once again, we point out the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of rules. PT (Comments): At this stage, PT does not identify constrains in moving forward as suggested by the COM. SE (Comments): Regarding the need for proportionality for pension foundations see Q18. For pension foundations, the primary conflict-of-interest relationship is not with external service providers but with the sponsoring employer. This structural conflict is already comprehensively addressed under national law through the mandatory parity-based board composition which ensures equal representation of employer and employee interests. This governance model provides an embedded and supervised safeguard against conflicts of interest at board level. SI

Presidency questions	Comments
	(Comments): Yes for managing conflict of interests. SK (Comments): Comment: No objections.
Q21: Do MS support the proposed diversity and gender-balance requirements, as well as the integration of ESG considerations in investment decisions? If not, which practical challenges in implementing these measures do you foresee and why?	AT (Comments): We understand the intention, but we believe that several provisions (such as Diversity & Inclusion) should not be regulated solely within the IORP II framework, but rather across sectors. Otherwise, there is a risk of inconsistent regulations. BE (Comments): We support the proposed diversity and gender-balance requirements, however the reporting requirements on these will increase the burden for IORPs. We therefore propose to delete Art. 21.9. We consider it already today a requirement in the context of the prudent person rule, that ESG considerations are integrated in investment decisions. BG (Comments): BG: The proposed requirements could lead to an excessive administrative burden for the IORP. In this regard, we do not support the inclusion of gender-balance requirements (Article 21, paragraphs 8–10) which in our view is not

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	proportionate. In addition, given the high fit and proper requirements to board members (incl preliminary authorization in case of Bulgaria) we believe that additional requirements on diversity and gender balance could over-complicate selection of these persons (or even sometimes come at the hidden expense of merit by choosing a person from a less represented group rather than the most qualified one. Regarding ESG considerations we deem this requirement to be duplicative, taken into account the requirement in Art. 3 of SFDR for adoption of policies on the integration of sustainability risks in their investment decision- making process.*).* DE (Comments): See answer to Q18. ES (Comments): Although we are not specifically asked about this, we would like to clarify a concern regarding the new requirements in paragraph 8 of this article, related to gender diversity and the inclusion of representatives of social partners. We believe it would be advisable to better define their application in those Member States whose legislation establishes a supervisory body for the occupational pension plan (the Supervisory Committee) where the social partners are already represented, not requiring such representation in the management companies also. In the latter case, for example, it would not make sense to include representation of social partners. FR (Comments): FR: **Regarding gender equality, France supports these provisions in principle**. France already complies with these provisions at the national level, thanks to cross-sectoral rules. These rules set clear quantitative targets, without

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	individual adjustments possible —only minimum thresholds are set for undertakings to be obliged to comply with those rules (notably based on company size). The first subparagraph of paragraph 8 is already provided for in *Loi n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle* and the second paragraph of 8 is already provided for by *Loi n° 2021-1774 du 24 décembre 2021 visant à accélérer l'égalité économique et professionnelle*, dite loi Rixin. **These minimum harmonization rules are therefore welcome.** However, it could be useful to provide that the obligation set out in paragraph 9 does not apply if there are already more stringent provisions in national law, in particular if those provisions already enshrine quantitative targets under national law. Furthermore, in light of experience gained while negotiating texts that already exist in national or European law, it seems necessary to further define the concept of management, which remains rather vague. Finally, echoing the comments made by several Member States, France would like clarification from the Commission on the interaction with other European directives dealing with these issues, such as Directive 2022/2381, known as the 'women on board' directive. **Regarding ESG**, France plans to come back to the Presidency at a later stage, pending further analysis. France would welcome clarification from the Commission on the interaction with other European directives, notably the SFDR ongoing review. GR

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	(Comments): EL: We consider the introduction of diversity and inclusion elements a positive step forward. However, we have concerns on its applicability to cases where the members of the MSB of the IORPs are not appointed or nominated, but they are selected by their members. HR (Comments): We can support both the diversity and gender-balance requirements and the integration of ESG considerations in investment decisions. IT (Comments): Although we support in principle the gender balance, this obligation could not be applicable in practice to those IORPs where members of the management or supervisory board are not appointed directly by the IORPs but are elected by the members of the IORPs or by the representatives of social partners who have set up the IORP. Clarification on the exclusion of such cases is needed in the text. LT (Comments): We support the proposed requirement, at the same time, we note that diversity and gender balance requirements may pose problems for small Member States as they may limit the ability to select competent individuals. In our view some proportionality may be introduced. MT (Comments): Malta agrees with the proposed diversity and gender-balance requirements. Still, Malta is concerned that this could be challenging especially for smaller

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	countries where knowledgeable resources are limited. Hence, there shall be flexibility in relation to such requirements. With respect to the integration of ESG considerations in investment decisions, Malta agrees with the introduction. NL (Comments): Yes we support the proposals. We think this is important and we do not see practical challenges in implementing these measures. PL (Comments): PL: the proposed changes will entail additional administrative burdens, in particular in the compliance function. We postulate that caution should be exercised when introducing statutory body requirements for IORPs with objectives other than maximum efficiency in IORP management (e.g. gender parity, transparency of recruitment and pay), especially as their implementation may be impossible to meet in the case of small IORPs. Once again, we point out the need to maintain the objective of the IORP Directive, which is a minimum harmonisation of rules. PT (Comments): At this stage, PT does not identify constrains in moving forward as suggested by the COM. SE (Comments): SE considers a more general focus on equal opportunities and all forms of discrimination as preferable. Moreover, the article is problematic from a

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	corporate governance perspective since the owners (i.e., the social partners) appoint the board, which in turn appoints the CEO. SE also sees a risk of double regulation as the annual reporting directive (2013/14/EU) is enforced by IORPs. Regarding the integration of ESG factors in investment decisions, this requires deeper analysis to avoid increased administrative burden. Simplification is important to reduce costs for consumers and companies. Moreover, decisions related to ESG may raise the threshold for consumers making decisions about how to invest their savings. It is important with simple choices and products to increase participation in occupational pension schemes. SI (Comments): Yes, together with proportionality. SK (Comments): Comment: During implementation, difficulties may arise for which there are currently no basic principles on how to deal with them.
Q22: Do MS agree, in principle, with the new provisions in article 22? Are there specific areas where additional guidance or clarification would be helpful?	AT (Comments): We do not see any added value in differentiating between 'qualifications' and 'professional qualifications. In the interest of the beneficiaries, 'professional qualifications' should always be required. BE

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	(Comments): In the interests of proportionality and burden reduction, we believe it important to maintain the possibility of a collective assessment for persons who effectively run the IORP/AMSB, as is foreseen in the new Art. 22.1.a.iv. BG (Comments): BG: Yes. We see no need for further guidance/clarification. DE (Comments): No remarks at this stage. ES (Comments): We would like to have more information about the implications of extending the requirements to the administrative, management or supervisory bodies. The requirements in this matter must, in any case, be collective, as acknowledged in Recital 27 and in the following paragraph (iv) of article 22.1.a). In any case, we would appreciate it if you could clarify the implications of the term "or" in the sentence "members of administrative, management or supervisory bodies" Does it mean that, if these requirements are imposed, for example, on the management body, they would not apply to the supervisory body? In our case, the fit and proper requirements apply to the management entity, but not to the control committee, which acts as the supervisory body of the IORP

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	FR (Comments): FR: **France supports the changes proposed by the Commission**, that are perfectly aligned with recent changes to the Solvency 2 directive and tailored to IORPs specific governance, **with the following three nuances:** First, **France opposes a collective assessment of the fit criterion for AMSB members**. This would represent a significant relaxation of the fit and proper requirements that exist in financial legislation. A collective assessment is usually used to supplement an individual fit analysis, as an additional safeguard. It also appears dangerous in that it could allow unfit and unsuitable individuals to join the AMSB as free riders. This is not desirable. Second, **France questions the changes proposed to paragraph 2 that includes an assessment by the competent authorities on an ongoing basis, as this is not provided for in the Solvency 2 framework**. If this is not justified by the Commission, France proposes deleting this paragraph for the sake of consistency with other existing frameworks. Thirdly, on a more technical note, France would like the term 'professional qualifications' to be used throughout the article to avoid differences in treatment. GR (Comments): EL: We support the strengthening of fit-and-proper requirements. We consider that these measures contribute to the sound governance and prudent management of IORPs. HR (Comments):

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	We support the proposed amendments to Article 22, as they strengthen the fit and proper framework and enhance supervisory oversight. IT (Comments): In principle, we would support the COM proposal, but we see the need to clarify in the Directive what are the differences among 'persons who effectively run the IORP', 'members of the administrative body' and 'members of the management body'. LU (Comments): LU agrees with the new provisions in article 22 with regards to fit and proper requirements. MT (Comments): Malta agrees with the amendments to Article 22. It also agrees that compliance for fit and proper requirements should be on an ongoing basis and the IORP itself should first identify the non-compliance. Malta would also like further clarification on the term "other key functions". NL (Comments): We agree in principle with the proposed provisions in Article 22. We identified several areas where additional clarification would be beneficial. First, the proposal states in paragraph 2 that NCA's "are able to assess" on an ongoing basis. Our understanding of this paragraph is, that whilst NCAs are granted the ability to make assessments on an ongoing basis, this does not entail an obligation for the NCA to conduct assessments on an ongoing basis. This could be clarified. Second, the term "administrative body" as referred to in point (iv) would also benefit from a definition to prevent uncertainty. The Commission explained this definition is part of the Solvency II framework. In

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	that case, we need to check that definition with regards to the IORP framework, and a reference tot the Solvency framework would be useful. PL (Comments): PL: in the event that new obligations are imposed on national supervision, we call for them to be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. Any changes should be assessed in the context of national circumstances. We support proposals to strengthen the ongoing supervision of IORPs, taking into account the internal rules of the Member States. With regard to the adaptation of the IORP framework to the Solvency II rules (in terms of different adjustment structures), we raise doubts – whether this is the result of the planned changes regarding the possibility for IORPs to offer (as part of auto-enrolment) an additional pension product such as PEPP, or whether it results from other initiatives. PT (Comments): PT supports the strengthening of the fit-and-proper framework as an important element of sound governance and effective supervision of IORPs. We can concur in principle with the proposed provisions. SI (Comments): We have doubts that so detailed requirements are necessary. They are also not in line with requirements set in Solvency 2. We see also that requirements in point 1(a)(ii) and 1(a)(ii) are duplicating and complicating as there is no different requirements, SK

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	(Comments): Comment: No objections.
Q23: Are there additional competencies that MS consider essential for persons who effectively run the IORP or persons who serve on its management or supervisory body or key function holders?	BG (Comments): Q23 – BG: No. The fit and proper requirements in the directive are more or less common across all financial institutions. DE (Comments): No remarks at this stage. ES (Comments): No comments so far FR (Comments): FR: See comments above. GR (Comments): EL: We do not have any other comments. HR (Comments):

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	The competencies and knowledge required for persons who effectively run the IORP and key function holders are well outlined in Article 22. IT (Comments): No. In our view there is no need to add anything. MT (Comments): Malta has no comments to add in this regard. NL (Comments): No PL (Comments): PL: in the event that new obligations are imposed on national supervision, we call for them to be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. Any changes should be assessed in the context of national circumstances. We support proposals to strengthen the ongoing supervision of IORPs, taking into account the internal rules of the Member States. With regard to the adaptation of the IORP framework to the Solvency II rules (in terms of different adjustment structures), we raise doubts – whether this is the result of the planned changes regarding the possibility for IORPs to offer (as part of auto-enrolment) an additional pension product such as PEPP, or whether it results from other initiatives. PT (Comments):

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	PT tends to be supportive of the proposed notification requirements to CA, considering the positive impacts on transparency, supervisory awareness and institutional integrity. No additional observations to present on additional competencies. SI (Comments): No. SK (Comments): Comment: The notification requirements in Article 22 (paragraphs 1a, 1b and paragraph 2) may undermine the system based on prior consent from our NCA. We requests a regulation that would allow MSs to require prior consent for selected persons, as our NCA considers the requirement for prior consent to be an important preventive supervisory tool.
Q24: Do MS support the proposed requirement for IORPs to notify competent authorities of any changes regarding persons who no longer meet fit and proper requirements? If not, please explain why.	BE (Comments): We support this notification requirement. BG (Comments): Q24- BG: We support the requirement for IORPs to notify competent authorities of changes regarding non-compliant persons to ensure continuous supervisory oversight. The members of the boards of IORPs in Bulgaria are subject to prior approval by the national supervisory authority before their appointment. If approved by

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	the FSC and appointed by the IORP, the respective person is registered as a board member of the company in the commercial register (which is deemed known by all third parties). In this regard, we would suggest par. 1a of Art. 22 to be supplemented, for instance by adding "Member States shall require that IORPs notify their competent authorities of any changes to the identity of the persons referred to in paragraph 1, along with the reasons for the changes and all information needed to assess whether the new persons appointed are fit and proper**, except where the respective person is subject to prior approval by the competent authority.**" DE (Comments): Support. ES (Comments): We agree in principle. FR (Comments): FR: See comments above. GR (Comments): EL: We support this proposal. HR (Comments): We support the proposal. IT

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	(Comments): Yes. This obligation is still in place in Italy. MT (Comments): Malta supports the proposed requirement for IORPs to notify NCAs of any changes regarding persons who no longer meet fit and proper requirements. NL (Comments): We support this requirement PL (Comments): PL: in the event that new obligations are imposed on national supervision, we call for them to be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. Any changes should be assessed in the context of national circumstances. We support proposals to strengthen the ongoing supervision of IORPs, taking into account the internal rules of the Member States. With regard to the adaptation of the IORP framework to the Solvency II rules (in terms of different adjustment structures), we raise doubts – whether this is the result of the planned changes regarding the possibility for IORPs to offer (as part of auto-enrolment) an additional pension product such as PEPP, or whether it results from other initiatives. PT (Comments): Please refer to our answer to Q23. SI

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	(Comments): Yes. SK (Comments): Comment: The notification requirements in Article 22 (paragraphs 1a, 1b and paragraph 2) may undermine the system based on prior consent from our NCA. We requests a regulation that would allow MSs to require prior consent for selected persons, as our NCA considers the requirement for prior consent to be an important preventive supervisory tool.
Q25: Does the empowerment of competent authorities to assess compliance on an ongoing basis—including identifying conflicts of interest and requiring the removal of non-compliant persons—raise any practical concerns, e.g. because it deviates from current practices? If so, please explain why.	BE (Comments): We agree that competent authorities should have the power to assess compliance on an ongoing basis, but it should not be required to actually assess such compliance continuously. In first instance it is up to the IORP itself to assess compliance. The IORP should be required to report any instance of non-compliance, on which basis the competent authority should act. This reporting is already foreseen in the proposal (Art. 22. 1b). DRAFTING proposal Art. 22.2. "*Member States shall ensure that the competent authorities are able to **regularly** assess whether the persons who effectively run the IORP or carry out key functions fulfil the requirements laid down in paragraph 1 **on an ongoing basis**, and whether there are any actual or potential conflicts of interest and how these are prevented or managed."* BG

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	(Comments): BG: No, we support this proposal. DE (Comments): No remarks at this stage. ES (Comments): No comments so far FR (Comments): FR: See comments above. GR (Comments): EL: We support in principle this proposal. The term “has other key functions” is not clear. It should be clarified that this means “are responsible for other key functions”. HR (Comments): We are still in the process of assessing the proposal; however, at this stage, we have not identified any major challenges or concerns. IT (Comments): We support the COM proposal, but we suggest a drafting amendments in order to clarify that NCA are not required to make a continuous assessment:

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	Drafting suggestion: "Member States shall ensure that the competent authorities ~~are able~~ **have the power** to assess whether the persons referred to in paragraph 1 **fulfill** the requirements laid down in paragraph 1 ~~on an ongoing basis~~, and whether there are any actual or potential conflicts of interest and how these are prevented or managed" MT (Comments): Malta supports the proposal but is concerned that the continuous assessments to be conducted by the NCAs might be too burdensome but is of the view that the NCA should have the necessary powers to carry out these continuous assessments if so required. NL (Comments): This does not raise practical concerns, provided it does not entail an obligation to the NCA to assess compliance on an ongoing basis. PL (Comments): PL: in the event that new obligations are imposed on national supervision, we call for them to be analysed in terms of their legitimacy and, in particular, whether the desired effects will justify incurring additional burdens. Any changes should be assessed in the context of national circumstances. We support proposals to strengthen the ongoing supervision of IORPs, taking into account the internal rules of the Member States. With regard to the adaptation of the IORP framework to the Solvency II rules (in terms of different adjustment structures), we raise doubts – whether this is the result of the planned changes regarding the possibility for IORPs to offer (as part of auto-enrolment) an

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	additional pension product such as PEPP, or whether it results from other initiatives. PT (Comments): For the same reasons expressed in our answer to Q24, PT also sees as favourable the empowerment to evaluate and enforce compliance on a continuous basis. SE (Comments): To carry out ongoing fit and proper assessments that consider individuals' knowledge, experience, and integrity, the supervisory authority would need direct access to registers held by other public authorities. Such connectivity—even if technically and legally possible—would likely raise issues that would need further examination, including the protection of personal data and compliance with the GDPR. In Sweden, the supervisory authority conducts fit and proper assessments at the individual level when an IORP notifies the authority of changes to the persons holding these positions. The assessment is based on information obtained from, for example, the Swedish Police Authority, the Swedish Companies Registration Office, the Swedish Tax Agency, the Swedish Enforcement Authority, and credit reference agencies. The authority also assesses whether any potential conflicts of interest could arise. Since the IORP is required to ensure on an ongoing basis that these individuals continue to meet the fit and proper requirements, it should be sufficient for the supervisory authority to carry out its assessment when the IORP submits a notification of changes.

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	SI (Comments): We agree with the proposal as we already operate within this framework. However, it is essential that the IORP itself recognises non-compliance with the requirements and takes immediate action. SK (Comments): See comment to Q23/Q24.
Q26: Do Ms agree with the proposed amendments in Articles 23, 25(2), 26 and 28. If not, please elaborate/justify your position.	BE (Comments): Joint comment for all concerned Articles: Given the enormous diversity within the world of IORPs, not only between different Member States but even within a single Member State, we advocate a proportional application of the obligations arising from the Directive. Some of the requirements are disproportionate for small IORPs. Therefore, the reference to 'size' should be kept in Art. 23, 24, 25, 26 and 28. Furthermore, given the context that many IORPs do not have own staff nor any person envolved receives a remuneration, the requirements on remuneration should also consider this specificity, and therefore, the reference to 'internal organisation' should be kept in Art. 23. For such IORPs it should not be required to establish a remuneration policy. DRAFTING proposal: Article 23.1 : "*Member States shall require IORPs, **where relevant,** to establish and apply a sound remuneration policy for all those persons who effectively run the IORP, carry out key functions and other categories of staff whose professional activities have a material impact on the risk profile of the IORP in a manner that is proportionate **to their size and internal***

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	organisation, *as well as to the size, nature, scale and complexity of their activities.*" We would like to note that care must be taken to ensure that the changes made as part of the IORP review are consistent with those made as part of the SFDR review. If the obligation added by Art. 23 (3) (h) is abolished as part of the SFDR review, this provision must also be deleted. Article 28: We understand that where members and beneficiaries bear risks, the risks and risk tolerance limits from the perspective of the members and beneficiaries has to be considered. This implies that this information must be collected. In view of burden reduction and considering the role of the social partners, we propose that this information can also be obtained through the representatives of the members concerned. DRAFTING proposal: Art. 28.2.(i) "*an assessment of how the risks the IORP is or could be exposed to compare to the risk tolerance limits approved by the management or supervisory body of the IORP. Where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, the risks and risk tolerance limits from the perspective of members and beneficiaries should be considered, taking into account their capacity to bear risk and their risk appetite.* ***The risk tolerance limits may be gathered at collective level and expressed by the representatives of members and beneficiaries***;" BG (Comments): BG: The proposals in Article 23(3)(h) and (i) for further developing the remuneration policy should be withdrawn in view of the proposed amendments in SFDR. DE (Comments): No remarks at this stage.

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	DK (Comments): Denmark generally supports efforts to strengthen the regulatory framework, but we believe that any new requirements should be based on the need to ensure the prudent operation of the IORP for the protection of members and beneficiaries. For example, we question whether the proposed requirement to have a specific policy on own risk assessment (Article 28) is essential, as it may not add significant value in practice. ES (Comments): We do not understand the justification for eliminating the reference to size in article 25, when regulating the risk management system. We believe it would be preferable to allow Member States the freedom to apply this principle. FR (Comments): FR: **France fully supports the amendments to Articles 25 and 26**. France proposes to further develop the provisions governing risk management policy. Article 25 currently lists the risks to be considered in IORPs' risk management, including investment-related risks (Art. 25 (c)). However, the current wording may lead to misinterpretation ("in particular derivatives, securitizations, and similar commitments."). France believes this article could be clarified to ensure its application to all asset types, including unlisted assets and other comparable alternative investments. France will submit proposal in writing.

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	France supports in principle the amendments to Articles 23. Regarding sustainability, France plans to come back to the Presidency at a later stage, pending further analysis. France would welcome clarification from the Commission on the interaction with other European directives, notably the SFDR ongoing review. Regarding point (i), although France very much supports in principle, France would wonder about the co-existence of this provision with provisions of the European directive on pay transparency adopted on May 10 2023. Clarifications from the Commission could be welcome. **Regarding article 28, France supports main changes proposed but wonders about the need to include in an own-risk assessment an assessment of "economies of scale and efficency options",** which has probably little to do with a risk assessment. If the link is not properly justified by the Commission, France proposes to delete this assessment. GR (Comments): EL: In principle we support the proposed amendments to articles 23, 25(2), 26 and 28. However, regarding art. 28(2), we are particularly concerned about the requirement to assess the economies of scale, as it appears to be unrelated to the own-risk assessment obligation. HR (Comments): We agree with the proposed amendments in Articles 23, 25(2), 26 and 28. HU (Comments): HU: We agree with the clarification and addition of the ORA provisions, but we consider it important to enforce the principle of proportionality and to

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	ensure that the implementation of the provisions does not cause excessive administrative burdens. IT (Comments): Regarding Article 23 on remuneration policy, we suggest **deleting** the provision about the integration of sustainability risks, as this is part of the SFDR review. We accept the COM proposals about Articles 25(2) and 26. About Article 28, we do **not** see the need to expand the own risk assessment. LU (Comments): LU is not per se opposed to the proposed amendments which might be useful in some cases, but similar to our general comment on the need to have proportionality embedded in the text, we express our doubts if a one size fits all approach, designed for bigger IORPs is warranted for every IORP structure. With regards to Article 25(2) on risk management, the reference to "**size** and internal organisation" criterion should remain as it allows for proportionality. LV (Comments): • Regarding the integration of sustainability risks: If the remuneration policy is aligned with the long-term interests of the institution, the interests of pension members, sound risk management, and sustainability risk is integrated into the institution's risk management, own risk assessment, and investment policy, then it can be concluded that sustainability risk is already part of the institution's operations and risk management. Our opinion is that this is an unnecessary administrative burden and overregulation.

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	There is no need to include additional principles that will in some way duplicate existing ones. • Regarding the principle of equal pay: We have no specific objections to the implementation of this additional principle, however at the same time, we draw attention to the fact that by 7 June 2026, Member States must ensure horizontal application of the Pay Transparency Directive (EU) 2023/970. Introducing additional gender-neutral remuneration requirements in IORP II would create regulatory overlap without clear prudential benefit. The objectives of equal pay and non-discrimination are already fully addressed in EU social legislation applicable to IORPs as employers. Regulatory consistency should be achieved through coherent allocation of requirements across legislative frameworks rather than duplication of horizontal social policy rules in prudential legislation. MT (Comments): Malta agrees with all the proposed amendments in the Articles indicated. NL (Comments): We agree with the proposed amendments to these articles. Regarding Article 26, we believe the proposal could benefit from a more detailed description of the tasks of the internal auditor. Examples of this could be the drafting of an audit plan, annual reporting and/or reporting on actions taken after earlier findings. PL (Comments): PL: in order to maintain the principle of proportionality, we oppose the proposal to delete the word "size" in the text of the IORP II Directive, where it refers to the inclusion of "size, nature, scale and complexity". It is necessary to ensure

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	consistency with the Solvency II framework in terms of proportionality, simplification and burden reduction. PT (Comments): Regarding Article 28, PT is sceptical on encompassing a mandatory assessment for economies of scale and other efficiency options, as those appear to go beyond the purpose of the ORA. SE (Comments): Ok with amendments in articles 23, 25 and 26. As regards article 28: recital 28 of the amending directive states that an occupational pension institution should assess the risks to which it is, or may become, exposed against the risk tolerance limits approved by the management body, and take into account the risk capacity and risk appetite of members and beneficiaries. Article 28(2) adds points (i), (j) and (k). Under point (i), an assessment must be made of how the risks to which the IORP is, or may become, exposed compare with the risk tolerance limits established by the management body. In the new Article 44b(2)(a), it is stated that an occupational pension institution shall determine the risk tolerance of members and beneficiaries who bear risk. The risk tolerance limits referred to in Recital 28 appear to be broader and to target several types of risk tolerance limits. Is there a missing requirement for the management body to establish risk tolerance limits beyond the risk tolerance of members and beneficiaries who bear risk? Or is this something that is left to each Member State to regulate? SI

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	(Comments): Yes. SK (Comments): Comment: No objections.
Q27: Do Member States agree with the proposed expansion and standardisation of the SIPP? If not please elaborate/justify your position.	BE (Comments): We understand from the current drafting of Art. 30 that if an IORP manages different pension schemes, the IORP is to adopt a SIPP per pension scheme. It is not clear what is meant with 'different pension schemes'. We should avoid the situation that a SIPP should be drafted for each single pension scheme (this could be even at the level of a pension arrangement of one self-employed person) where there is no different investment strategy. It should be possible to have a single common SIP for the same type of pension schemes where the IORP applies the same investment policy. DRAFTING proposal: Art. 30: "*The statement shall be adopted by the administrative, management or supervisory body of the IORP. Where an IORP manages* ***different*** ***several*** *pension schemes* ***that are subject to different investment policies,*** *separate statements of investment policy shall be* ***prepared*** ***established*** *for each."* BG (Comments): BG: We have concerns with regard to the proposal to have investment policy for each pension schemes as this does not take account the different business models of IORP in different Member States. In Bulgaria the pension schemes

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	managed by an IORP are managed in one pension fund having one investment policy. We would like to refer to our comments in Art. 9a discussed at the last working party. Having separate provision of the SIPP for each occupational scheme may be logical in the context of models where social partners regulate all aspects of the scheme, including its investment activity, but is not consistent with the activities of small provider companies where the employer is setting only basic parameters (contribution amount, waiting period, etc.) and does not choose the investment policy. Effective accounting for the different investment policies and objectives of each individual occupational scheme within an IORP may in a number of cases require the separation of assets at scheme level, separate calculation of the value of a share, etc., which would make such a solution more expensive and less attractive for both IORPs and small sponsoring undertakings. So having different investment policies per scheme should be a MS option and not a requirement. DE (Comments): No remarks at this stage. ES (Comments): In this matter, we would just like to insist on our concern about the change that it appears could imply for IORPs, namely the change from the prudent person rule to the prudent person principle. We refer to the comments already made in relation to article 19. FR (Comments): Support.

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	GR (Comments): EL: Although in principle we support the proposed expansion and standardization of the Statement of Investment-Policy Principles, we suggest that we are cautious about the information included in it. For example, the investment objectives of each pension scheme should be included in the investment policy rather than in the public Statement of the Investment Policy Principles. The latter should contain only the principles. Similarly, information on how more complex asset classes will be used, should be included in the investment policy and not in the Statement. Moreover, the wording in the fifth subparagraph should be amended to better reflect the IORPs' obligation to draw and maintain a single common Statement of Investment Policy Principles, alongside separate investment policies for each pension scheme. In addition, we consider that any provision of information to members and beneficiaries should relate to the Union PBS of art. 37(2). HR (Comments): We can accept the Commission proposal. IT (Comments): We are in general in favor with the COM proposal. About the wording, we suggest the following modification, in order to clarify that a default option is not always necessary: ***Drafting suggestion:*** "Member States shall ensure that, for pension schemes in which members are entitled to make investment choices, the statement provides for an appropriate range of investment options, including a default option **where appropriate**, classifies those options according to the nature and extent of the investment

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	risk borne by members, and ensures that sufficient information is made available to enable informed investment decisions." MT (Comments): Malta understands that an IORP managing different schemes shall adopt a statement of principles for each scheme. NL (Comments): Yes we agree. Based on the clarification provided by the Commission we interpret this provision in such a way that every scheme should have a SSIP, but if multiple schemes have the same investment policy, materially the same statement can be used for those multiple schemes. PL (Comments): PL: the proposed provision creates a dual system, as the rules for investing are largely contained in the statutes of supplementary pension funds. These changes go beyond the objective of the IORP II Directive, which is a minimum harmonisation of rules. We postulate that the detailed requirements remain within the competence of the Member States. PT (Comments): PT has some concerns regarding the introduction of new content in the SIPP. New elements can enhance the size and complexity of its contents, creating an additional burden for pension fund management entities. At this stage, it is still unclear to us how the expanded content will contribute favourably towards its comprehensibility and usefulness for informed decision making.

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	The obligation to prepare separate statements also seems disproportionate for IORPs that finance several schemes based on a single asset portfolio. Therefore, PT would be inclined to retain the current wording of Article 30, which refers to IORP instead of pension scheme. SE (Comments): Information to consumers should not be regulated in detail. In Sweden, the social partners decide how this is to be designed. SI (Comments): We would like to emphasise that a SIPP should be prepared for each pension fund separately. Having one SIPP for an IORP that manages many pension funds is not enough, even if different investment policies are described in one document. In that case, the SIPP document is not user-friendly for members, who cannot make an informed decision based on it. SK (Comments): Comment: No objections.
Q:28 Do MS agree with the changes in Article 31, in particular the removal of MS' possibility to fully restrict outsourcing arrangements? If not please elaborate/justify your position.	BE (Comments): We agree with the proposed changes and this is already current practice in Belgium. BG (Comments):

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	BG: We do not agree with the proposal and we would like to retain the possibility not to allow outsourcing of key functions. Removing the possibility for Member States in Article 31 not to allow IORPs to outsource activities, including key functions and the management of the IORP, to external contractors does not take into account the specificities of IORP structures in different Member States. In some Member States, occupational pension provision is carried out by financial institutions set up specifically for this purpose, and the legislation is based on the assumption that they should have capacity in all key areas of their activity. In our case these institutions are managing 1bis funds as well as IORPs. They are required to meet high requirements and to have sufficient expertise in all key areas, the outsourcing of certain activities (e.g. management of investments, payment of benefits and the key functions) is explicitly prohibited. This is a substantially different model than the model of IORPs established by the sponsoring undertaking that are run at strategic level by representatives of the employer and the employees and many activities are outsourced. As the IORP II is a minimum harmonization directive respecting the diversity of national pension systems and the prerogative of Member States to organize them within its broad framework, we insist that Member States preserve the option to restrict outsourcing. DE (Comments): No remarks at this stage. ES (Comments): As explained in the working document submitted to us, in this point, according to the proposal "Member States' will not be able to prohibit anymore any outsourcing activities" We wonder whether any exception could be allowed, since in our case in Spain, we regulate, as the only

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	exception, the impossibility of outsourcing the oversight of the depositary. Could such an exception be allowed, for example? If not, in principle we do not agree with the proposal. We believe that some flexibility should be left to the member states to provide for their own exceptions. FR (Comments): FR: **France fully supports changes in paragraph 1**, to ensure that every IORPs, if they wish so, can benefit from the advantages of outsourcing. At the same time, outsourcing poses specific challenges across the financial sector and places dependencies on the activities of IORPs in particular, with specific risks as a consequence. **Therefore, France considers that (i) changes in paragraph 5 shall be supported, and (ii) a dedicated supervision, aligned with existing provisions in Solvency 2 is needed. That is why France supports the new article 50a, and the deletion of paragraph 7 in consequence.** GR (Comments): EL: We do not have any concerns about the proposed amendments in article 31. HR (Comments): We can agree with the proposed changes. We would welcome further clarification regarding the possibility for a Member State to require an IORP to outsource certain activities. Could the European Commission clarify whether this should be understood as allowing a Member State to empower the national competent authority to require outsourcing where it considers such a requirement justified and appropriate?

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	HU (Comments): HU: The current provision in Art. 31(7) ensures that authorities can have the information necessary for supervision of outsourced activities, and we would prefer for such a safeguard to be part of the final text. IT (Comments): Italy supports removing the possibility for MS to fully restrict outsourcing arrangements. As regards the modifications to Article 31(5) with respect to potential or actual conflict of interest, we believe that a general requirement should be introduced in order to state that IORPs shall take any necessary measure to avoid conflicts of interest, including those related to service providers. LV (Comments): We would like to express our reservations regarding the proposal to remove NCAs ability to restrict outsourcing arrangements. From a prudential supervision perspective, such a change could significantly limit supervisory tools that are currently essential for ensuring sound and transparent governance practices within IORPs. MT (Comments): Malta notes with concern the removal of paragraph 7. Although the Commission mentioned that the obligations have been included in Article 50a, however the said Article only mentions cooperation and not the request of information from the IORP itself. A suggestion is raised to amend the wording of paragraph (a) of sub-article (1) of Article 50a to state “the service provider cooperates with

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	and where necessary provides all the necessary information to the supervisory authorities…." NL (Comments): Yes we agree. Many Dutch IORPs outsource both the administrative tasks and the investment management to take advantage of economies of scale and scope. We agree that clear rules should be set governing the outsourcing arrangement, as in line with the proposals. PL (Comments): PL: proposal interferes with national competences for the supervision of IORPs. The provisions in question should be of a minimal harmonisation nature, and the possibility of such action so far has been correct and advisable. PT (Comments): PT favours removing the possibility to prohibit outsourcing arrangements, as this can help prevent fragmentation, facilitate access to specialised services and economies of scale, while promoting operational flexibility. With this in mind, we would, nonetheless, be cautious on maintaining a broad supervisory option in the text to mandate outsourcing, as such intervention in organisational decisions should remain exceptional and strictly justified. SE (Comments): SE considers it unreasonable to impose requirements on outsourcing. It should be an option to allow it. SI (Comments):

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	We understand that the possibility to restrict outsourcing is still available under the new Article 50a. Additionally, paragraph 1 of Article 31 refers to paragraph 7, which has been deleted. Please correct the reference. SK (Comments): Comment: This competence should be left to the respective MS – to decide which activities the IORP will be allowed to delegate. The regulation that would allow any activity of the IORP to be outsourced to another entity is disproportionate, too extensive and may increase the risks to which the assets of the clients under management will be exposed. The risks that the outsourcing of certain activities would entail may outweigh the benefits of delegating them to another entity (for example, internal audit should be among the key functions that should be carried out by IORP and porfolio management should only be able to be outsource to selected authorised entities). Excessive freedom in this area may lead to complex supply chains, which may weaken the supervision of the IORP's activities by NCAs and thus jeopardise the protection of clients.
Q29: Do MS agree with the changes to Article 33 and the appointment of a depositary at pension scheme level? If not, please elaborate/justify your position.	AT (Comments): As there might be specialised depositaries for liquid assets and other depositaries e.g. for private markets assets, it can make sense for pension scheme assets to be held by more than one depositary for specialisation and diversification issues. We made a drafting suggestion in our written comments (CA ~~shall~~ *may* require the IORP to appoint one depositary) The mandatory appointment of a depositary should be independent of the type of product (or pension scheme). BE

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	(Comments): It is unclear what the purpose is to assign a depository for each pension scheme. We should avoid the situation that a contract should be signed with the same depository for each single pension scheme (this could be even at the level of a pension arrangement for one self-employed person). On the basis of the explanation in the PCY discussion note, we have the impression that the requirement should read as the appointment of a single depository at the level of the IORP. . DRAFTING proposal: Art. 33.2 : "*For pension schemes in which the members and beneficiaries do not fully bear the investment risk, the home Member State may require the IORP to appoint* ***one depositaries per pension scheme a depository*** *for safe-keeping of assets or for safe-keeping of assets and oversight duties in accordance with Articles 34 and 35.*" BG (Comments): BG: No, we prefer the current text of Art. 33. At present many IORPs managing occupational schemes of different employers do not ring-fence their assets and have a single custodian for the whole IORP and not per scheme. The appointment of a depositary at scheme level may be necessary where the schemes managed have material differences (investments, risks covered, et c) but there are also providers that offer ready pure DC products and social partners are setting only basic parameters (contribution amount, waiting period, etc.). In these cases, there is no need to ring-fence the schemes and to appoint a custodian per scheme, this would make the product unnecessarily expensive and less attractive both for IORPs and small sponsoring undertakings. The references in all articles of Chapter 3 (Articles 33(3), 34(1) and 35(1)) to Chapter IV of UCITS directive in our view lead to contradictions and overlaps between the provisions of Chapter IV of UCITS and Chapter 3 of IORP directive. If some provisions of Chapter IV of UCITS is necessary to be

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	applied for depositaries of IORPs than the relevant provisions should be directly inserted in the IORP directive and not to use a reference. DE (Comments): We agree with the changes of Article 33. However, appointment at IORP level should be possible. ES (Comments): No comments so far. FR (Comments): FR: France is currently analysing these complex and technical provisions, comparing them with those in Solvency 2 and national law, assessing their compatibility with the financial regulations governing trustees and depositaries, and engaging more closely with stakeholders on the subject. France therefore reserves its position for the moment and plans to return to the matter at a later stage in writing. GR (Comments): EL: Regarding Article 33, we would appreciate further clarification on the role of the trustee and how it differs from that of the depositary. We would have preference the requirement for a depositary to be imposed by the MS and not by the competent authority, i.e. to remain the current text as it is. HR (Comments):

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	We agree with the proposal. However, we suggest introducing the provisions in the Level 1 text rather than using a cross-reference to the UCITS Directive. IT (Comments): We support mandating the appointment of a depositary for schemes in which members and beneficiaries fully bear the investment risk. In Italy all IORPs have a depositary. We propose the following two amendments of the proposal. The requirement to appoint a depositary should apply **to the IORP**, rather than on a per-scheme basis, as IORPs may operate multiple pension schemes. Additionally, the appointment of a depositary should be required at the **Member State level** and not imposed by the NCA. LT (Comments): We believe that the requirement to appoint a depositary may create an administrative burden, especially for small IORPS. We suggest allowing IORPs to implement alternative safeguarding measures that offer a comparable level of protection, proportionate to the IORP's nature, scale, and complexity, provided these measures are approved by the competent authority. This amendment would allow Member States to implement more flexible, yet equivalent, asset safeguarding measures, taking into account the size and complexity of IORPs, thereby reducing disproportionate costs and administrative burdens, especially for smaller institutions. LU (Comments): In principle, LU agrees with the amendments as suggested to appoint a depositary for the safe-keeping of assets. However, this should be done at IORP level, not at pension scheme level. It is not uncommon for a pension scheme to be limited to a very small group of beneficiaries, or even to a single

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	person. Requiring a separate depositary for each pension scheme could therefore generate additional costs and make investments less attractive when the target population is too limited. MT (Comments): Malta agrees with requiring an IORP to appoint a depositary per pension scheme for the safe keeping of assets and oversight duties. NL (Comments): No, we do not agree with the mandatory appointment of a depositary at pension scheme level. This should remain a member state option. Alternatively, NL can propose an amendment that contains an exception for Members States that have other safe-keeping measures instead of a depositary in place, provided these measures provide a comparable level of protection. This is acknowledged in recital 31 but in our view insufficiently reflected in the wording of article 33. We therefor propose to insert similar wording to the recital into article 33(1): '1. In the case of a pension scheme where members and beneficiaries fully bear the investment risk, the competent authority of the home Member State shall require the IORP to appoint one depositary per pension scheme for the safe-keeping of assets and oversight duties in accordance with Articles 34 and 35 or, if the IORP itself keeps the assets in accordance with Article 34(2), require the IORP to have a trustee who performs the oversight duties in accordance with Article 35 and is notified to the competent authority. **Members States may maintain other safe-keeping measures instead of a depositary if these measures provide a comparable level of protection.** '

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	Clarification: Whether a mandatory depositary can bring added value to members and beneficiaries strongly depends on how pension funds are organised and operate in practice. In the Netherlands, the tasks that a depositary would perform are performed by other entities/arrangements, offering a level of protection comparable with a depositary. Dutch pension funds typically appoint third parties - like fiduciary managers, (investment) administrators and/or custodians - who operate independently from (operational) asset or investment managers and carry out similar tasks and responsibilities for e.g. oversight, cash-flow monitoring and safekeeping of assets. In the relationship between pension funds and custodians, liability with regards to the safekeeping of assets is also covered. Custodians are liable for loss of assets. This liability is contractual and typically fault based. However, the slightly stricter UCITS regime exists to protect retail investors in NAV priced funds and is limited to custodial instruments. In an IORP context, the bankruptcy remoteness of custodian arrangements, external audit, and prudential supervision already address the residual risks. Moreover, the Dutch regulatory framework places the IORP's investments and assets under strict scrutiny of internal governance and supervision at the IORP itself, of the external auditor (who controls cash-flows and transactions on a sample basis – like a depositary would) and the NCA (that has the possibility to monitor and assess the IORPs assets, valuations, transactions etc.). A mandatory depositary would therefore bring little added value in the Netherlands, while it would make pension fund arrangements more complex (by adding an extra layer) leading to higher costs for members and beneficiaries. Even with a relatively small annual depositary fee (estimated costs of a depositary are 1- 5 bp of AUM) the annual extra costs for the Dutch pension

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	sector would be substantial (given that de total amount of Dutch pension assets amount to EUR 1630 bn, these costs will be between EUR 163 mln (1bp) up to EUR 815 mln (5bp)). Instead of this money being used for pensions, it would end up with financial institutions providing depositary functions. We believe this is not in the interest of members and beneficiaries and that the added complexity runs against current simplification initiatives. Notwithstanding our opposition to a mandatory depositary as stated above, in any case we do not think it is proportionate to require the appointment of a depositary for every pension scheme. A requirement to appoint a depositary per IORP would be more appropriate. PL (Comments): PL: we emphasise the need for greater flexibility, for example by proposing the possibility rather than the obligation to appoint a depositary, so as not to impose unnecessary burdens and also to take into account different national cases and situations. The procedure for appointing a depositary in the context of the proposed changes is not clear to us. Once again, we point out the need to maintain the objective of the IORP II Directive, which is a minimum harmonisation of rules. PT (Comments): PT tends to support the proposed strengthening of the depositary framework. Nevertheless, and considering potential collective or risk-sharing structures within an IORP (in PT it is common for a single IORP to finance several schemes based on a single asset portfolio), we defend retaining the current wording of Article 33 in not imposing one depositary for each individualised scheme. SE

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	(Comments): The proposal does not sufficiently take into account the fact that the organisation and management of occupational pension schemes varies significantly between Member States. In light of Recital 31 and the explicit references to the UCITS Directive in Articles 33 and 34, it is clear that the proposed amendment is based on the assumption that IORPs operate in a manner comparable to investment funds. This is, however, not the case in Sweden, and the proposed amendment is therefore problematic for several reasons. Swedish occupational pension institutions generally use depositary banks for the safekeeping of assets. However, the function of such depositary banks differs fundamentally from the role assigned to UCITS depositaries. The core reason is that an occupational pension institution, unlike a fund management company, owns the assets it manages. Consequently, these assets are not separated from the institution itself. The oversight functions performed by UCITS depositaries—functions that the Commission now proposes to extend to IORPs—are therefore not applicable to the operational model or assets of Swedish occupational pension institutions. It is important to underline that, in this regard, occupational pension institutions operate in the same way as insurance undertakings, which are not subject to any depositary requirements under the Solvency II Directive. The Commission justifies its proposal partly on the grounds of strengthening the protection of members and beneficiaries of IORPs. However, the proposal would not achieve the intended effect on the Swedish market. Sweden already has solvency and asset-coverage rules that are tailored to the activities of occupational pension institutions and that ensure the level of protection that

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	the Commission seeks to achieve concerning liability and documentation. Policyholders, insured persons, and other beneficiaries enjoy a statutory preferential right in the event that an occupational pension institution enters bankruptcy or becomes subject to enforcement measures. To safeguard this preferential right, IORPs must maintain a register that shows, at all times, the assets used for liability coverage and the value of those assets. The preferential right covers the assets listed in this register. The Swedish NCA supervises compliance with these coverage and documentation requirements, which correspond to the rules applied to insurance undertakings under the Solvency II framework (cf. Articles 275 and 276 of the Solvency II Directive). In our view, the current provisions of Article 33 should remain unchanged and the member state option retained. Should this not be possible, Sweden considers it essential to introduce a possibility for Member States to exempt IORPs from the depositary requirement where national rules already provide equivalent protection. Recital 31 indicates that Member States should be able to maintain national systems offering protection equivalent to that afforded by depositaries. However, this principle is not reflected in the text of Article 33, which provides no corresponding exemption. We therefore propose the introduction of the following Member State option as a new third subparagraph in Article 33(1): ***"Member States may decide not to apply this paragraph for IORPs that are subject to requirements that provide a level of protection for members and beneficiaries comparable to those laid down in the first subparagraph."*** If, notwithstanding these concerns, a mandatory depositary requirement is introduced, it is essential that the proposal be limited so that a separate

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	depositary is not required for each occupational pension plan. Swedish occupational pension institutions often manage multiple pension plans arising from different collective-agreement sectors, and these assets are commonly held jointly with the depositary bank. The Commission's proposal could therefore compel institutions to separate assets at the depositary level. When institutions conduct investment transactions, this would lead to increased costs—such as multiple transactions and related fees—and considerable administrative burdens, ultimately negatively affecting beneficiaries. Any depositary requirement must therefore apply at the institutional level, not at the pension-plan level. Furthermore, if the requirement is introduced, more flexible rules are needed to reflect the fact that depositaries do not always carry out the oversight functions envisaged under the UCITS framework. This could, for example, be addressed through the following addition to Article 34(1): *"[…] for the safe-keeping of assets and,* ***where relevant****, oversight duties in accordance […]".* Finally, we request clarification regarding the Commission's proposal in Article 33(1) allowing IORPs to appoint a manager instead of a depositary. It is unclear in which circumstances this would apply and how the respective roles of depositaries and managers are intended to interact. Further explanation from the Commission would therefore be welcome. SI (Comments): We cannot require the appointment of a depositary at pension scheme level. This should be done at the pension fund level, since one pension fund can operate many pension schemes.

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	SK (Comments): Comment: We support the proposal.
Q30: Do MS consider that the revised Article 34 provides an appropriate and proportionate liability regime for depositaries? If not, please elaborate/justify your position.	BG (Comments): BG: Yes, we agree in principle, the revised Article 34 provides an appropriate and proportionate regime for depositaries. However, as national rules on custodians/depositaries have already been established, we would welcome a more flexible provision stating for instance "… for the execution of the tasks of the depositaries in relation to the safe-keeping of assets and the depositary liability, **Member States shall apply accordingly** Chapter IV of Directive 2009/65/EC ~~shall apply accordingly~~ **or similar national rules**." DE (Comments): No remarks. DK (Comments): Denmark would like to emphasize the importance of flexibility in safeguarding pension scheme assets. We do not see a need to always require the appointment of a depositary at pension scheme level. There are other effective methods for asset protection, such as the use of registered assets, which is well established in Denmark.

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	It is important to avoid imposing unnecessary burdens and to allow for alternative, well-functioning approaches to safeguarding assets. ES (Comments): No comments so far. GR (Comments): EL: We do not have any concerns. HR (Comments): We agree with the amendments as proposed by the European Commission. IT (Comments): We underline the need to clearly specify the UCITS provisions applicable to IORPs depositaries (e.g., all, or a clearly identified selection). This clarification would be useful to ensure uniform application of EU legislation and guarantee convergence and a level playing field. LU (Comments): LU agrees with the current well-developped regime under the UCITS Directive. MT (Comments): Malta notes the new requirement for an IORP to have a trustee to perform oversight duties where the IORP itself keeps the assets in line with Article 34(2).

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	In this respect, it is to be noted that this requirement will add administrative and financial burdens to appoint a trustee. Clarification is sought for instances where the IORP is a trust, and whether in such a case an extra trustee would need to be appointed or not. Malta notes that sub-paragraph (3) has been amended and a depositary can only be appointed under Directive 2009/65/EC. Clarification is sought as to whether depositaries appointed under Directive 2013/36/EU, 2009/65/EC or Directive 2011/61/EU, may remain to be depositaries and if not, what action can Member States take in that situation. NL (Comments): We have doubts that provisions stemming from the UCITs directive are a useful point of reference for IORPs. In the case of undertakings for collective investments in transferable securities (UCITs) a depositary provides a clear added value for retail investors. IORPs, however, are very different from UCITs. First, IORPs are pension institutions with a social purpose that provide financial services (recital 32 IORP II). Second, IORPs invest not only in transferable securities, but also in a wide range of other asset classes (private equity, hedge funds, infrastructure) where daily valuations and controls are neither possible nor necessary. PL (Comments): PL: we emphasise the need for greater flexibility, for example by proposing the possibility rather than the obligation to appoint a depositary, so as not to impose unnecessary burdens and also to take into account different national cases and situations. The procedure for appointing a depositary in the context of the proposed changes is not clear to us. Once again, we point out the need to maintain the objective of the IORP II Directive, which is a minimum harmonisation of rules.

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	PT (Comments): At this stage, PT can concur in principle with the revised liability regime for depositaries. SI (Comments): Yes. SK (Comments): Comment: We support the proposal.
Q31: Do MS agree with introducing a duty-of-care principle at Union level for IORPs? If not, please elaborate/justify your position.	BE (Comments): Firstly, we would like to emphasize that in a situation where the IORP only has a best-efforts obligation, this cannot be converted into a best results obligation as a result of the duty of care. We would also like to point out that it cannot be the intention that an IORP should provide financial advice to its members. This does not fall within its social objective. DRAFTING proposal: Art. 44a (2): "*Member States shall ensure that IORPs put in place safeguards, including* ***guidance objective information*** *to support prospective members, members and beneficiaries when they are deciding on the options available to them, and inform them about the potential consequences of their decisions.*"

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	It should also be borne in mind that an IORP must also consider the collective interests of its members and cannot focus solely on the individual interests of its members, as these are not always aligned. BG (Comments): BG: Yes. DE (Comments): We agree; simplifications should be checked to avoid unnecessary admistrative burden. <u>Drafting suggestion for Article 44a paragraph 1:</u> Second sentence: 'Those interests shall include the objective of providing adequate~~, risk-adjusted and cost-efficient~~ returns over the long term, consistent with the long-term nature of pension obligations." Rationale: simplification, the returns are the key. <u>Drafting suggestion for Article 44a paragraph 2:</u> The term "guidance" should be specified. DK (Comments): We agree. ES (Comments): Regarding article 44 a), of the principle of acting in the interest of members and beneficiaries is viewed positively. However, when paragraph 2 refers to "guidance to support prospective members, members and beneficiaries", we would appreciate clarification as to whether this refers to providing

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	information or to giving advice, since if it entails advice, it could imply an increase in burden that we consider excessive. FR (Comments): FR: **France fully supports the introduction of a minimal "duty of care" in the IORP Directive**, as it would raise the level of consumer protection on pension products in EU markets. **It shall remain a minimum harmonisation rule, as France has a full duty of advice provision in place.** On a more technical note, France would welcome clarification in article 44ª that the term 'guidance' does not imply financial advice. GR (Comments): EL: We support the COM proposal. The proposed Article 44a strengthens members' protection and ensures that pension schemes deliver outcomes that members and beneficiaries might reasonably expect, particularly in defined contribution schemes, where investment choices directly impact retirement income. HR (Comments): In general, we agree with the Commission proposal. IT (Comments): We are still assessing the proposal but we already have concerns about paragraph 2, considering that it is not clear what safeguards should be put in place. Furthermore, in our view, the offer of financial advice may not be mandatory for IORPs while it is crucial that information provided is clear and effective, especially in the DC context.

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	About this point, we suggest the following drafting amendments, putting the accent on the information: ***Drafting suggestion:*** "Member States shall ensure that IORPs **offer clear and effective information** ~~put in place safeguards, including guidance~~ **and, when possible, guidance**, to support prospective members, members and beneficiaries on the options available to them and inform them about the potential consequences of their decisions". LT (Comments): We can agree with introducing a duty-of-care principle at Union level for IORPs. LU (Comments): LU agrees in principle. However, the relative nature of the term "cost-efficient" and what a cost-efficient product is has been intensively discussed during the RIS negotiations. It could be misunderstood as only being the cheapest option, which might not in all cases be the best option. MT (Comments): Malta agrees with the introduction of a duty-of-care principle, which is similar to the trustee principles of fiduciary obligations expected by the entity administering an IORP. NL (Comments): We agree in principle. However, we feel that in analogy to the prudent person principle, the wording of Article 44a and the recital should reflect that, where

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	pension schemes have a collective nature, the duty should require institutions to act honestly, fairly, and professionally in the best interests of members and beneficiaries **as a whole**: Article 44a (1): Member States shall, taking into account the nature of the pension scheme, ensure that every IORP authorized in their territory always act honestly, fairly and professionally, and in accordance with the best interest of their members and beneficiaries **as a whole**. Those interests shall include the objective of providing adequate, risk-adjusted and cost-efficient returns over the long term, consistent with the long-term nature of pension obligations. PL (Comments): PL: we support the introduction of due diligence principles, provided that they remain at a minimum level of harmonisation without prejudice to the increased protection provided at national level. PT (Comments): PT supports the introduction of a duty-of-care principle at Union level, provided it is framed as a minimum standard and does not interfere with national labour law or social partner governance arrangements. SE (Comments): The proposals are very extensive and will increase the administrative burden with unclear benefits. In Sweden, it is furthermore the social partners who are responsible for providing information. Contact with policyholders takes place mostly through the social partners. There should be an exception for collectively agreed occupational pensions. SI

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	(Comments): We are not against new Article 44a. SK (Comments): Comment: No objections.
Q32: Do MS agree with the provisions in Article 44b? If not, please elaborate/justify your position.	BE (Comments): We are strongly opposed to the 1st paragraph of Article 44b. This concerns SLL and it is up to the employer and the social partners to decide on the design and implementation of the pension scheme. The IORP is merely the administrator of the pension scheme and must ensure that the execution of the scheme is carried out in the best interests of the members and beneficiaries and that the applicable legislation is complied with. It cannot be made responsible for decisions that are taken upfront and outside the IORP. The 1st paragraph should be completely deleted. BG (Comments): BG: In our view the requirements "that the structure, design and implementation of pension schemes are appropriate in view of the identified needs, characteristics and risk profile of the members and beneficiaries" are rather abstract and do not take into account the fact that sometimes not the IORP, but the employers and the employees/their representatives define many parameters of the occupational scheme, IORPs just implement them. We are sceptical whether these requirements will be effectively implemented and bring value in practice.

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	DE (Comments): We agree; the primacy of national social and labour law should be made clear and simplifications should be checked to avoid unnecessary admistrative burden. <u>Drafting suggestion for Article 44b paragraph 1:</u> '1. Without prejudice to national social and labour law on the organisation of pension systems, including compulsory membership**, the employer's design authority** and the outcomes of collective bargaining agreements, Member States shall require that:' Rationale: The primacy of national social and labour law should be made clear. <u>Drafting suggestion for Article 44b paragraph 2:</u> '2. **<u>For the purpose of paragraph 1,</u>** Member States shall ensure that, where members bear investment risk, IORPs assess the long-term risk from the perspective of members and beneficiaries, including ...' Rationale: Clarification. The assessment of paragraph 2 is related to the requirements of paragraph 1, and these requirements are without prejudice to national social and labour law on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements. DK (Comments): We agree with the intention behind Article 44b and the obligation on IORPs to adapt the pension schemes to the identified needs, characteristics and risk profiles of members. This would entail obligations similar to IDD POG

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	requirements while taking into account that distribution is not a factor for IORPs. The wording in the proposed Article is quite short and principle based and the various concepts could be elaborated on in L1 or L2 with inspiration from IDD POG. This would provide more clarity and certainty to both IORPs, members and supervisors. The interplay with collective bargaining agreements could also be further specified, as it is somewhat difficult to understand the effects of the introductory wording of Article 44b (1). Regardless of the fact that many occupational pension schemes are agreed as part of collective bargaining agreements, we support requirements on IORPs (and thereby, indirectly, on the parties behind the IORPs) to take the needs, characteristics and risk profiles of the members into account. ES (Comments): In relation to article 44 b concerning the "appropriate structure and implementation of pension plans", it is necessary to take into account that in some member states, such as Spain, the design and supervision of the pension plan does not fall under the responsibility of the pension fund management entity, but rather under the Supervisory Committee of the plan, composed of representatives of the sponsor and of the members/beneficiaries. In such cases, the application of this article should be excluded or clarified. Furthermore, the regulation already provides for the own-risk assessment which, in Spain, is carried out by the pension fund management entity and is aimed at identifying and assessing the risks to which the pension funds they manage are or may be exposed in the short and long term, and which

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	could affect the fund's ability to meet its obligations. in any event, the content of this assessment could be strengthened, but a new framework of obligations in relation to the pension plan should not be established, as in the case of Spain this could entail additional burdens for the Supervisory Committees, as article 44 b is currently drafted. Additionally, the article refers to the "determination of the risk tolerance of members and beneficiaries who bear risks". in the case of occupational pension plans in Spain, decisions on the investment policy, as well as any amendments thereto and the pension fund to which the plan is attached, are adopted by the Supervisroy committee, in which the members and beneficiaries of the plan are represented. therefore, risk tolerance is not considered at an individual level, but rather collectively, through their representation in the decision-making process of the Supervisory Committee. Considering the practical complexities involved in the application of this article, and the additional burdens it could impose on Supervisory Committees, **its deletion would be advisable in order to avoid discouraging the second pillar.** FR (Comments): FR: France welcomes in principle the principle set out in 1(a) as a guiding principle-based requirement for the proper structuring of IORPs. Including this principle in EU law may be a useful signal. **However, France questions the relevance of the regular review provided for in 1(b).** France would like the Commission to elaborate on the enforceability of those new provisions and on what it would mean in practice from a supervisory perspective. France questions whether such requirement is the proportionate to what is needed for the sector.

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	GR (Comments): EL: We support in principle COM's proposal. Nevertheless, improvements should be brought into the text to deal with cases where the design is the responsibility of the social partners and not IORPs itself. We also suggest that the periodic review of the suitability of the investment should take into account the members as a cohort and not individually. HR (Comments): While we broadly support the intent of Article 44b, we are still assessing the practical implications of the introduced requirements. IT (Comments): Insufficient consideration appears to have been given to the functioning of DC schemes, particularly those offering multiple investment options, such as those in Italy, in which the characteristics of the membership base are less relevant because members may choose the investment option best suited to their personal situation and financial risk tolerance. In fact, only the provision of paragraph 2, letter c) seems appropriate for these funds. In our view, the entire new Article 44b should be revised to properly take into account the possibility that IORPs offer multiple investment options. Therefore, we suggest amending art. 44 b) as follows: ***Drafting suggestion:*** "1. Without prejudice to national social and labour law on the organisation of pension systems, including compulsory membership and the outcomes of collective bargaining agreements, Member States shall require that:

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	(a) IORPs ensure that the structure, design and implementation of pension schemes are appropriate in view of the identified needs, characteristics and risk profile of the members and beneficiaries, in a manner that is proportionate to the nature, scale and complexity of the scheme. **IORPS that offer multiple investment options should have different investment strategies based on different risk profiles, to allow the matching of personal situation and financial risk tolerance of members and beneficiaries.** (b) IORPs regularly review and, where necessary, adapt the structure, design and implementation of the pension scheme, taking into account any material developments, in order to ensure that the scheme remains appropriate and consistent with the needs, characteristics and risk profile of members and beneficiaries, in a manner that is proportionate to the nature, scale and complexity of the scheme. **Where IORPs offer multiple investment options, they should periodically review the suitability of the investment options and, where there is a default option, the suitability of that default option.** The IORP shall document the assessment of whether the structure, design and implementation of pension schemes are appropriate as referred to in the first subparagraph, point (a). ~~2. Member States shall ensure that, where members bear investment risk, IORPs assess the long-term risk from the perspective of members and beneficiaries, including:~~ ~~(a) the determination of the risk tolerance of members and beneficiaries bearing risks;~~ ~~(b) the introduction of the use of pension projections in the risk assessment from the perspective of members and beneficiaries;~~ (c) ~~where the IORP offers multiple investment options, the periodical review of the suitability of the investment options for the members according to their risk tolerance, and where there is a default option, the review of the suitability of that default option;"~~

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	MT (Comments): Malta is concerned with the introduction of the obligation to regularly review the pension scheme to be in line with the risk profile of the member. Malta is also concerned about whether it is practically possible to implement and is of the opinion that the risk profile of the member needs to be aligned with the scheme, and where this is not the case, a change is made in the investments of the member to align the investments with the risk profile where appropriate. NL (Comments): In the Dutch context the social partners are to a large extent responsible for defining the structure, design and implementation of the pension scheme. We would like to see the autonomy of social partners in this respect better reflected in the text of paragraph 1: '1. Without prejudice to national social and labour law on the organisation of pensions schemes **and the autonomy of social partners**, including compulsory membership and the outcomes of collective bargaining agreements Member States shall require that:' With regard to Article 44a(1 (b)) we suggest a change to the wording to better reflect that the appropriateness of a pension scheme should be properly ensured for all participants and not depend on the nature, scale and complexity of a scheme: 'IORPs regularly review and, where necessary, adapt the structure, design and implementation of the pension scheme, **in a manner that is proportionate to the nature, scale and complexity of the scheme**, taking into account any material developments, in order to ensure that the scheme remains appropriate and consistent with the needs, characteristics and risk profile of members and

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	beneficiaries. ~~in a manner that is proportionate to the nature, scale and complexity of the scheme.'~~ We support paragraph 2 on the basis of the understanding that the assessments can be done on an aggregate level of members (for example groups, age cohorts etc). PL (Comments): PL: we express doubts about the planned changes in the context of simplification and administrative burden. We propose that the proposed changes should not go beyond the nature of minimum harmonisation of regulations. The establishment of a more detailed legal framework for IORPs should remain the responsibility of Member States that are familiar with the specificities of their own markets PT (Comments): Ensuring appropriate scheme design and implementation is a legitimate objective, but PT fears the proposed Article may be duplicating other obligations already covered within the revised Directive, such as the ORA and other governance provisions, while raising doubts on expected outcomes and practical implementation. With the goal to promote simplification and avoid undue burdens, we would suggest attempting to encompass these contents in other existing obligations. SE (Comments): Occupational pension companies in Sweden have no possibility to influence the design but only manage pension obligations within the framework of the plans negotiated by the social partners. It is very important that any

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	requirements regarding pension plans take this responsibility division into account. SI (Comments): We are not against, although any duplication of the provisions brings unclarity and it is important to steamline the provisions. SK (Comments): Comment: SK does not support the new concept in Article 44b. It is not clear what objective is to be achieved and whether it is not possible to achieve the aim through other provisions of the IORP II. The application of the article and the supervision appear to be very problematic. We are also of the opinion that provisions in para 2 are duplicative (to provisions e. g. in article 19). Overall, implementation of this article will create additional administrative and systematic burden to IORPs.
Q33: Do MS agree with the introduction of the proposed complaints-handling requirements at Union level? If not, please elaborate/justify your position	BE (Comments): We agree with the introduction of a complaints-handling procedure at the level of the IORP. However, we do not understand the reference to "ADR procedures". We consider it excessive if each Member State must create a separate (new) institution for this purpose and propose that this could be organized through a complaints body, such as an ombudsman. DRAFTING proposal: Art. 44.c : "*4. Member States shall ensure that IORPs inform members and beneficiaries who lodge a complaint about at least one* ***alternative dispute***

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	resolution (ADR) <u>complaints</u> *body which is competent to deal with disputes concerning the rights and obligations of members and beneficiaries laid down in this Directive.*" The same for the following articles. BG (Comments): BG: In general, we support the introduction of complaint-handling requirements. However, we would like to receive further clarifications as to to the language. Art. 44c (2) stipulates that "the procedures and arrangements … shall be available in the official languages of the Member State concerned, or in another language accepted by the competent authorities of that Member State, or agreed between the IORP and its members and beneficiaries.". What are the reasons for explicitly allowing the usage of another language (cross-border activity, specific regimes in certain MSs). Would it be possible to restrict information provision and procedure execution only to official languages in the respective MS (and possibly Host MS language) *?* DE (Comments): The additional ADR procedures should be coherent. For an assessment, we request additional explanations on the overlap and distinction of the scope of application of the proposal and of the ADR Directive. Regardless, simplifications should be checked to avoid unnecessary admistrative burden. <u>Drafting suggestion for Article 44c paragraph 4:</u> **<u>'For schemes where there is no ultimate responsibility of the employer or where the social partners are not involved in steering and administration of the scheme,</u>** Member States shall ensure that IORPs inform members and beneficiaries who lodge a complaint about at least one alternative dispute resolution (ADR) body which is competent to deal with disputes concerning

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	the rights and obligations of members and beneficiaries laid down in this Directive.' Rationale: Simplification. We think that an ADR body does not provide additional value at least in case of schemes where there is an ultimate responsibility of an employer for the scheme or the social partners are involved in the scheme. DK (Comments): We agree, but it is unclear to us what is meant by the requirement on IORPs to have procedures appropriate for "settlement of complaints". We would propose that IORPs are only obliged to reply to complaints (similar to requirements in IDD art. 14), while procedures for "settlement" is reserved for ADR or the courts. ES (Comments): Articles 44 c (complaints and claims) and 44 d (out-of-court dispute resolution) should apply subsidiarily, that is, in cases where member states have not already included these procedures in their national legislation, in order to avoid unwanted overlaps or differences in regulation regarding details such as how information is provided to members FR (Comments): FR: **France supports these provisions**, which strengthen consumer protection. France might come back in writing at a later stage with wording suggestions, based on a comparative assessment with other financial regulations complains provisions. Notably, based on the model provided for in Article 183(1) of the Solvency 2 directive, the provisions could include an

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	obligation of IORPs to inform members and beneficiaries of the arrangements for handling complaints. GR (Comments): EL: We support the establishment of effective complaint-handling procedures, as set out in art. 44c. Such procedures ensure that members and beneficiaries have clear, accessible and effective channels to submit complaints concerning their rights, while promoting transparency. They also strengthen protection in cross-border cases. However, we do not see merit in setting up an ADR body. Pension schemes are not sold to customers or clients, rather they are typically established through collective agreements. HR (Comments): In general, we can agree with the proposal. HU (Comments): HU: We fundamentally agree with the introduction of complaint handling requirements (at EU level) for IORPs as well. However, in relation to the 40-day response deadline, we would like to highlight that, in our experience, a maximum complaint handling deadline of 30 days has proven successful in all financial sectors, and we would support this in the case of IORPs as well. IT (Comments): We have serious concerns regarding the provisions of paragraph 6, as the handling of complaints between IORPs and members and beneficiaries currently falls entirely outside the competence of the NCAs. This is a matter for national courts or ADR systems. The introduction of this additional burden on NCAs is neither rational nor justified and it would entail the obligation to

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	significantly increase staff and its training in order to deal with all the different complaints. In the interest of preserving the supervision goal of NCAs we suggest deleting this provision, introducing instead the obligation for IORPs to inform the NCA on an annual basis on all the complaints received. LU (Comments): In LU, there are 3 official languages. To avoid unnecessary administrative burden for IORPs, we suggest to limit procedures and arrangements to settle complaints to a version in one of the official languages, respectively to another language version accepted by the competent authority or agreed between the IORP and its members: *2. The procedures and arrangements referred to in paragraph 1 shall be available in ~~the official languages~~* ***one of the official languages*** *of the Member State concerned, or in another language accepted by the competent authorities of that Member State, or agreed between the IORP and its members and beneficiaries.* MT (Comments): Malta agrees with the introduction of new complaints-handling requirements. NL (Comments): With regard to Article 44 c (3) we would like to suggest a change of wording to reflect that communication by IORPs should be designed in a way that it reaches members and beneficiaries via a suitable medium. For example, consideration should be given to members and beneficiaries who do not have access to or cannot understand electronic communications, for example the elderly. We suggest:

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	'Member States shall require that IORPs reply, ~~either electronically or on another durable medium,~~ to the complaints of members and beneficiaries **in a manner that suits the indicated preferences of members and beneficiaries.** The reply shall address all points raised within maximum 40 working days.' With regard to para's 6 and 7 we follow the clarification provided by the Commission that these provisions are not meant as ADR procedures. We also understand the provision that in all cases complainants should receive replies in such a way that this does not always have to be a substantive response. It could also be an acknowledgement of receipt, possibly with the message that the complaint will be taken into account in the supervisory process. For example, if a complaint (which we refer to as a signal) triggers an investigation, this process is subject to supervisory confidentiality, and no further details can be disclosed. PL (Comments): PL: our doubts are raised by the provision concerning the body for settling out-of-court disputes – it has not been clarified what should be understood by the term responsible competent authorities and complaint. The functioning IORPs in Poland do not conduct cross-border activities, however, bearing in mind the gradual "encroachment" of the EC into the competences of the Member States, the above remark requires further explanation. PT (Comments): PT believes minimum complaints-handling standards can enhance member and beneficiary protection, especially in cross-border situations. Nevertheless, the drafting for the new obligations should remain flexible to accommodate existing national redress mechanisms, with potential equivalence capability and to avoid unnecessary duplications.

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	SE (Comments): Sweden already has well-functioning systems for handling complaints. It is important that these are not adversely affected, including the role of the social partners. The deadline should also be more flexible for complex cases SI (Comments): We are not against new Article 44c. SK (Comments): Comment: No objections.
Q34: Do MS agree with the introduction of out-of-court redress mechanisms as provided for in Article 44d? If not, please elaborate/justify your position.	BE (Comments): We consider it excessive if each Member State has to create a separate (new) institution for this purpose and propose that this could be organized through complaints body such as an ombudsman. DE (Comments): The additional ADR procedures should be coherent. For an assessment, we request additional explanations on the overlap and distinction of the scope of application of the proposal and of the ADR Directive. Regardless, simplifications should be checked to avoid unnecessary admistrative burden. Drafting suggestion for Article 44d paragraph 1:

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	'1. **For schemes where there is no ultimate responsibility of the employer or where the social partners are not involved in steering and administration of the scheme,** Member States shall establish adequate, independent, impartial, transparent and effective ADR procedures for the settlement of disputes between IORPs and their members and beneficiaries concerning the rights and obligations laid down in this Directive. Where appropriate, those procedures shall be applied by existing competent bodies. Member States shall ensure that such ADR procedures are applicable, and the relevant ADR body's competence shall effectively extend, to IORPs against whom the procedures are initiated.' Rationale: Simplification. We think that an ADR body does not provide additional value at least in case of schemes where there is an ultimate responsibility of an employer for the scheme or the social partners are involved in the scheme. DK (Comments): We agree. ES (Comments): Articles 44 c (complaints and claims) and 44 d (out-of-court dispute resolution) should apply subsidiarily, that is, in cases where member states have not already included these procedures in their national legislation, in order to avoid unwanted overlaps or differences in regulation regarding details such as how information is provided to members. FR (Comments): FR: **France supports this provision in principle.** France plans to come back at a later stage to the Presidency after due stakeholders' consultation.

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	GR (Comments): EL: We do not see merit in setting up an ADR body. Pension schemes are not sold to customers or clients, rather they are typically established through collective agreements. We are also concerned that this provision may create overlaps with existing national Alternative Dispute Resolution Systems. HR (Comments): We support the view that the procedures should be framed more clearly, ensuring that ADR serves as a complementary mechanism for resolving conflicts between IORPs and their members or beneficiaries. IT (Comments): We support the Commission's proposal. LU (Comments): LU agrees on the introduction of out-of-court redress mechanisms. However article 44d, read in conjunction with article 44c (7) needs more clarity what it means in practical terms with regards to cross-border disputes. It is not fully clear which ADR body or bodies are responsable to treat a cross-border related dispute between an IORP established in a Member State A and members of that IORP having their residence in a Member State B? It should be clearly laid down,that the home member State of the IORP should be responsable of having established ADR bodies that take charge of disputes arising with those licensed IORPs in that same member State. MT (Comments): Malta agrees with the introduction of the out-of-court redress mechanism.

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	NL (Comments): Yes we agree but it should be clear that ADR cannot replace court redress if national law does not provide for this. PL (Comments): PL: the element of cross-border activity is not included in the activities of Polish IORPs, however, due to the wide and uncertain scope of the proposed directive, we postulate that Article 44d should be implemented when no other mechanism exists in a Member State. PT (Comments): PT deems the suggested out-of-court redress mechanisms as appropriate but would again seek that those encompass equivalent existing national frameworks, promoting the principles of subsidiarity and proportionality. SE (Comments): It is important that the proposed requirements apply only where no mechanisms for handling complaints exist. The social partners currently have established systems for handling and reviewing complaints. Continued use of these systems must remain possible. SI (Comments): We are not against new Article 44d. SK (Comments):

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	Comment: No objections.
END	AT (Comments): END BE (Comments): END BG (Comments): END DE (Comments): END DK (Comments): END ES (Comments): END FR (Comments): END GR (Comments):

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