	Summary of Comments on Consultation Paper: Response to the Call for Advice on the review of the IORP Directive 2003/41/EC: second consultation - EIOPA-CP-11/006 **Q1– Q11**	**EIOPA-BoS-12/016** **15 February 2012**

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The numbering of the paragraphs refers to Consultation Paper No. EIOPA-CP-11/006

No.	Name	Reference	Comment	Resolution
1.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	1.	The consultation paper identifies a range of options for changing the scope of the IORP Directive. These options range from keeping the scope unchanged to extending the scope to all forms of pension schemes. One rationale behind the review of the scope of the IORP Directive is that the landscape of occupational pensions has changed in at least two important respects: 1. the growth of DC pensions 2. and the advent of funded pension schemes in the Central and Eastern European member states. These developments have led to the result that there are supplementary funded pension schemes and corresponding institutions which are not covered by the current scope of the IORP Directive, thus raising the issue of inconsistent supervision as well as the issue of beneficiary / member protection. However, these changes do not automatically mean that a review of the scope of the IORP Directive is required as a matter of urgency. The OPSG supports EIOPA's remark (section 4.3.11) that the dividing line between 1st, 2nd and 3rd pillar is not always clear. This finding of EIOPA calls for clarification of the different pillars which could contribute to a more consistent application of both	Noted

			Reg. 883/2004 and IORP Directive. The OPSG strongly supports EIOPA's suggestion for clarification. As EIOPA points out the structuring in pillars involves policy choices (4.2.12) and therefore the OPSG recommends initiating such a broad policy debate at EU level with Member States and other stakeholders. This should also help to determine the level of harmonisation desirable – or not - in pensions legislation across the EU. The OPSG would like EIOPA to advise the Commission to sequence its policy-making. The first task – and one that should be completed before any changes to the scope of the IORP Directive are initiated – is for the Commission to initiate the review of Regulation 883/2004, to better understand social security pension schemes and define the institutions that run or manage those social security schemes. The OPSG notes that private institutions delivering social security schemes under Reg. 883/2004 and Reg. 987/2009 could be under the scope of the reviewed IORP Dir. provided this Directive is adapted as suggested in EIOPA's draft advice under par. 4.3.15. Against this background, if the Commission aims at a high degree of harmonisation, the scope of the IORP Directive will necessarily be defined within a narrow range and will lose its "European" character. In contrast, a wider scope of the IORP Directive would require a low degree of harmonisation but could have the advantage of a better structuring of the pension systems across the EU and a consistent application of EU regulation in the relevant area. Aiming at a high degree of harmonisation while simultaneously extending the scope would strongly harm the further development of occupational and work	EIOPA recommends, under "Other advice", that the Commission consider the nature of the member protection in pension schemes outside the current scope and take legislative initiative if the protection offered is found inadequate. Agreed on the tension between the scope and the level of harmonisation.

			place pension schemes in all member states. OPSG Conclusion: The OPSG agrees with the analysis made by EIOPA. The review of Regulation 883/2004 should be finished before any changes to the scope of the IORP Directive are initiated. Furthermore, a policy debate is needed in order 1. to clarify the dividing lines between 1st, 2nd and 3rd pillar with regard to several aspects (e.g. membership, governance, control, tax, organisation, funding, benefit design, etc.) as a pre-requisite to the debate on the scope and, 2. to determine an optimal mix between the level of harmonisation sought in the revised IORP Dir. and the scope. In fact, there is no need for harmonisation if very few states are impacted by this Directive.	Noted
2.	AbA Arbeitsgemeinschaft für betriebliche Altersversorgung e.V.	1.	The AbA agrees, in principle, with the analysis as laid out in this advice. We believe there is an important link between the scope and the main objective of the Directive. As described in our answer to	Noted

			CfA 8, the objective of the IORP II Directive can be formulated as follows: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries." The definition of the "institution for occupational retirement provision" in Article 6 (a) IORP Directive is appropriate. Therefore the IORP II Directive has to focus on IORPs established by an employer and/or where the employer plays an essential role in the funding of the IORP. The IORP Directive is not the appropriate EU framework for non-occupational pensions. We propose that the issues that may arise in connection with the application of Article 4 of the IORP Directive and the entry into force of the Solvency II Directive (see section 4.3.20) could be solved by abolishing Article 4. Those Member States that wish their insurance companies or investment companies to conduct pension business could simply require them to establish a separate legal entity in the form of an IORP, to which the IORP Directive would then apply. The dividing lines between 1st, 2nd and 3rd pillar" should be clarified (4.5.). We support the EFRP who strongly encourage EIOPA and the Commission to adopt a typology or taxonomy of European pensions before further regulating this area.	Noted; not within mandate CfA, but EIOPA recommends, under "Other advice", that the Commission examines this issue. Noted
3.	ABVAKABO FNV	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a	Noted

			Dutch point of view. The PF is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
4.	AEIP	1.	28. AEIP stresses that the question of the scope of the IORP Directive is not of technical nature, but has political implications.	Noted

			Indeed it touches on questions with regard to the extent of the fundamental right and the autonomy of social partners to collective bargaining, and with regard to the dividing lines between pillars. 29. AEIP acknowledges however that a revised IORP directive might have a major impact in those member states that have already strong funded occupational pensions in place and that are into the current scope of the IORP directive. They might be faced with far reaching consequences of a harmonization, whereby other pension systems would stay out of its scope. 30. A unique and harmonized security level at the European level should not interfere with pension deals that are negotiated between social partners at national level. AEIP invites the decision makers at European level to take this highly politically sensitive issue into account when defining rules. Taking the above into account, AEIP supports the option 1 "leave the scope unchanged".	
5.	AFPEN (France)	1.	AFPEN agrees to EIOPA's analysis.	Noted
7.	AMONIS OFP	1.	CfA 1 Scope of the IORP Directive *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* AMONIS OFP considers it from uttermost importance that all pension schemes, occupational and non-occupational, in Europe are well protected. This implies that the IORP directive should be applicable to all types of pension provisioning, whether in or outside of an IORP (balance sheet provisions etc) if there is an employer-employee relationship. We thus regard schemes and institutions that provide pensions	Noted

			e.g. for self-employed non-occupational, thus not in scope of the directive. AMONIS OFP underlines however that a revised IORP directive might have a major impact in Belgium and some other member states that have already strong funded occupational pensions in place and that are into the current scope of the IORP directive. They might be faced with far reaching consequences of a harmonization, whereby other pension systems would stay out of its scope. AMONIS OFP would like to urge EIOPA and the European Commission to take explicit in consideration the differences that exist between the solvency of the pension institution (IORP or other) and the pension scheme. Therefore we consider that the IORP directive is a directive that regulates pension institutions and should continue to do so. If the Commission or EIOPA wish to take initiatives on the regulation of the pension schemes, we would invite them to take separate initiatives concerning the regulation and or sustainability of all pension schemes regardless of the pension institution that it used (IORP, insurance, book reserve, etc.). Taking in consideration that we suppose that the IORP directive should only focus on the regulation of the pension institution that manages occupational pension schemes, we agree with the analysis of the options as laid down in this advice. Although the (new) 1st pillar bis schemes, which are excluded under the current Article 2(2)(a) of the IORP directive, are made in relation to an occupational activity and are managed by private financial institutions, they are to be considered as non-occupational schemes. Indeed, there is no relation between the employer and the pension scheme and the institution (the employer does not play a role in establishing the scheme or the	

			institution, nor can he directly contribute to the scheme). Consequently, we believe these schemes are to be classified as non-occupational schemes. Because the IORP Directive is construed on the basis of the relationship between the employer or sponsoring undertaking, the employees, the pension scheme and the institution (including the essential role of the employer or sponsoring undertaking in the funding of the pension scheme), extending the scope of the IORP Directive would imply removing the reference to occupational and reviewing in fact the basic principle or concept of the IORP Directive. We agree that such process would not facilitate harmonization of the prudential regime for IORPs and could in fact give rise to more complexity and problems with regard to the application in practice. Indeed, this might also be an obstacle in a view to a further promotion of cross-border activities. In our view, these occupational pension schemes are fundamentally different in nature from occupational pension schemes and should thus be covered by different regulatory frameworks. The same applies for the schemes and institutions currently falling out of the scope of the IORP Directive without being explicitly excluded, because they are of a personal nature.	
8.	ANIA – Association of Italian Insurers	1.	The ANIA agrees on the EIOPA approach on scope and welcomes the reference to article 4 of the current Directive. The ANIA wishes to stress that certain issues will arise for those countries currently applying article 4 and the entry into force of Solvency II and urges the Commission to take the necessary actions. It is also a fact that after the entry into force of Solvency II, there will be two very different regulatory frameworks at the EU level for long term guarantees forming part of occupational pension products. Given the Commission´s clear aim to take into account lessons learnt from Solvency II in relation to long term	Noted; not within mandate CfA, but EIOPA recommends, under "Other advice", that the Commission examines this issue.

			guarantees in the revision of the IORP Directive, this is not only an issue that affects Member States that have made use of the current article 4 and of article 2.2(b) but also important when it comes to ensuring an adequate level of protection at the EU level for these products regardless of whether they are offered by insurance undertakings or IORPs. In addition, the ANIA agrees on the analysis of the options. However, the ANIA wishes to point to the fact that the difference between option 1 – where member states have the option to include those institutions currently falling out of the scope on a voluntary basis - and option 2 – where partial application would be a Member State option - needs further clarification. Finally, in line with the key principle of "substance over form", the ANIA believes that the IORP Directive should apply to IORPs providing occupational pension schemes on a funded basis, regardless of how contributions are collected and whether they are subject to a voluntary agreement or legal obligation. In this context, the ANIA welcomes EIOPA's intention not to touch upon the current exclusions of the IORP Directive. These exclusions mentioned in article 2.2 of the current IORP Directive should be retained. Although sufficient protection of these pension rights should be ensured outside the scope of this Directive. Additionally, in line with the OECD definition of occupational pensions, the ANIA would suggest to change the sentence in 4.5 EIOPAs advice paragraph 2 as follows: "For the purposes of this advice EIOPA assumes that 2nd pillar schemes are schemes were the employers - or groups thereof (e.g. industry associations) and labour or professional associations, jointly or separately - have a role in the establishment and/or funding of the scheme."	Agreed; advice amended to provide the clarification Agreed; wording amended

9.	AON HEWITT	1.	We support Option 2 that would clarify the letter and the scope of the current Directive while including the occupational pension systems in the new member States. The directive should be clearer when excluding companies that use internal provisions to cover retirement benefits for employees such as those in Spain where companies have both book-reserves and occupational qualified pension funds (in particular in the Banking Sector, Insurance and Stock exchange brokers).	Noted
10.	Association Française de la Gestion financière (AFG)	1.	In general AFG agrees with the analysis of the options.	Noted
11.	Association of British Insurers	1.	The ABI agrees with the analysis of the options. We do not see any reason why the IORP Directive should change from a Directive focussed on IORPs established by the employer and/or where the employer plays an essential part/role in funding the IORP. We do however remain concerned about the potential unintended consequences of a change to the scope. Currently the Directive only applies to trust based pension schemes; personal pension schemes are out of scope because they are covered by other EU regulations. The concern is that the introduction of automatic enrolment in the UK may change the classification of personal pension plans, with these falling under mandatory occupational plans. We believe that where an employee may not have taken any action to set up the pension plan, these should still be considered personal pension plans under the Directive.	Noted
12.	Association of French	1.	19. The FFSA wants to point out that the Directive should	Noted; outside EIOPA

	Insurers (FFSA)		apply to any IORP providing occupational pension schemes. Any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime. 20. Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop. 21. Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. 22. According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. The FFSA asks the Commission to examine this issue as suggested by EIOPA. A transitional solution could be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive 23. The FFSA is fully supportive of a Quantitative Impact study (QIS) and strongly asks for an extension of the impact assessment to French life insurance products. The future directive should indeed reinforce occupational pension internal market across Europe and French life insurance is a huge	mandate

			retirement market within Europe. The study should address the following questions: fair competition among stakeholders and regulatory arbitrage avoidance.	
13.	Assoprevidenza	1.	We agree in general with the analysis of the options as laid down in the advice A change of the scope of the IORP Directive is not only of technical nature, but has political implications. Indeed it touches on questions with regard to the extent and coordination of social security systems, their relation with competition rules, and the dividing lines between pillars. We support for keeping the scope of the directive unchanged. An unchanged scope of application of the IORP Directive would not mean that no appropriate regulation has to apply eventually to DC plans that fall outside the scope in case the protection offered by the national framework appears as not appropriate. All this has also to do with the relation between the IORP Directive and other legal framework. With regard to the 1th pillar or the 1th pillar bis this concerns the question on whether EIOPA can interfere on social security items. It is the member state's responsibility to take responsibility towards their citizen's for guaranteeing their rights in first pillar schemes and to make them sustainable.	Noted
14.	Assuralia	1.	CfA 1 SCOPE OF THE IORP DIRECTIVE *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?*	Noted

			The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following general remarks: 1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP. 2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios. The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures. 3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries: a) With regard to the pension institutions, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements. b) With regard to the pension obligation as such, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of	

			recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently. 4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field. Scope Occupational pensions are characterized by (1) a focus on long-term investment strategies that match their long term liabilities; and (2) a triangular relationship between the sponsoring employer, the employees/beneficiaries and the pension institution (IORP or insurance company). These characteristics may influence the way supervisory authorities need to deal with quantitative requirements (pillar I), qualitative supervision (pillar II) and disclosure rules (pillar III). It is therefore technically sensible to focus the scope of IORP II on occupational pension providers. Occupational pension providers are defined in the draft response as providers of long term pensions "where the employer plays an important role in the funding of the pension plan". They should in our view include pension plans funded by the employer, but also pension plans for the self-employed (draft response nr. 4.3.5.) and pension plans organised on the level of	

			an economic sector. Contrary to what the draft response seems to suggest (draft response nr. 4.5.), the role of the employer in the establishment of the provider is not relevant: Multi-employer commercial pension funds and insurance undertakings are for example occupational pension providers that are not established by the sponsoring employer. This definition would imply that a number of funded 1st pillar bis schemes are out of the scope of IORP II. EIOPA is right to point out that beneficiaries of all types of complementary pensions should be protected by high levels of prudential standards. We suggest to take a legal initiative in this field and to use the recitals of IORP II to explain that funded 1st pillar bis schemes need a consistent risk based prudential framework. The framework for insurance companies is the best benchmark available at present. Prudential rules and capital requirements serve to protect the occupational pension savings of people. A consistent degree of protection therefore needs to be set up for all occupational pensions.It cannot be stressed enough that both insurers and IORPs are providers of such occupational pensions. As Solvency II will probably be put in practice when IORP II is still under discussion,there is a clear need to avoid varying protection levels between beneficiaries serviced by insurance undertakings and IORPs. The prudential regimes of these two directives can be aligned for occupational pensions by adopting the following technical measures: (1) The European legislator should first ensure that Solvency II and IORP II would become operational simultaneously for occupational pensions. Such alignment can be achieved by introducing a workable transitional regime in Solvency II for occupational pensions offered by insurers via the presently discussed Omnibus II Directive.	

			(2) The European legislator should also open up the quantitative requirements of IORP II to insurance companies if they would turn out to be more adapted to long-term pensions than Solvency II. The IORP II Directive could amend the level 1 Solvency II directive in order to achieve such consistency (explicitly by amending the Solvency II directive itself or implicitly by amending art. 4 of IORP I).	
15.	Bayer AG	1.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree basically with the analysis of the options as laid out in this advice. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship. Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. 1. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the	Noted

			employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	
16.	BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände)	1.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree basically with the analysis of the options as laid out in this advice. The position of EIOPA is correct, not to extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits to the institution but only to the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and PSV would intervene in the case of insolvency. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee	Noted

			relationship. Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. 1. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	
17.	Belgian Association of Pension Institutions (BVPI-ABIP)	1.	CfA 1 Scope of the IORP Directive *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?*	Noted

			BVPI-ABIP considers it as the uttermost importance that all pension schemes, occupational and non-occupational, in Europe are well protected. BVPI-ABIP underlines however that a revised IORP directive might have a major impact in Belgium and some other member states that have already strong funded occupational pensions in place and that are into the current scope of the IORP directive. They might be faced with far reaching consequences of a harmonization, whereby other pension systems would stay out of its scope. BVPI-ABIP would like to urge EIOPA and the European Commission to take explicit in consideration the differences that exist between the solvency of the pension institution (IORP or other) and the solvency of the pension scheme. Therefore we consider that the IORP directive is a directive that regulates pension institutions and should continue to do so. If the Commission or EIOPA wish to take initiatives regarding the regulation of the pension schemes, we would invite them to take separate initiatives concerning the regulation and or sustainability of all pension schemes regardless of the pension institution that it used (IORP, insurance, book reserve, etc.). Taking in consideration that we suppose that the IORP directive should only focus on the regulation of the pension institution that manages occupational pension schemes, we agree with the analysis of the options as laid down in this advice. Although the (new) 1st pillar bis schemes, which are excluded under the current Article 2(2)(a) of the IORP directive, are made in relation to an occupational activity and are managed by private financial institutions, they are to be considered as non-occupational schemes. Indeed, there is no relation between the employer and the pension scheme and the institution (the	

			employer does not play a role in establishing the scheme or the institution, nor can he directly contribute to the scheme). Consequently, we believe these schemes are to be classified as non-occupational schemes. Because the IORP Directive is constructed on the basis of the relationship between the employer or sponsoring undertaking, the employees, the pension scheme and the institution (including the essential role of the employer or sponsoring undertaking in the funding of the pension scheme), extending the scope of the IORP Directive would imply removing the reference to occupational and reviewing in fact the basic principle or concept of the IORP Directive. We agree that such process would not facilitate harmonization of the prudential regime for IORPs and could in fact give rise to more complexity and problems with regard to the application in practice. Indeed, this might also be an obstacle in a view to a further promotion of cross-border activities. In our view, these occupational pension schemes are fundamentally different in nature from occupational pension schemes and should thus be covered by different regulatory frameworks. The same applies on the schemes and institutions currently falling out of the scope of the IORP Directive without being explicitly excluded, because they are of a personal nature.	
18.	BIPAR	1.	BIPAR strongly believes that citizens in the EU deserve secure and reliable pensions. One of the ways to obtain this is to protect all members and beneficiaries of all types of pension schemes. It should make no difference for the members and beneficiaries what kind of pension schemes they are part of, be they occupational or not. What is important is that they are sure that they are well protected and can rely on the same level of protection. We agree with EIOPA that for all kinds of pension schemes the same high standards of governance for the	Noted

			institutions that operate these schemes and the same rules of supervision should exist, taking into consideration that there must be room for the application of the principle of proportionality and adaptation to the specificities of the sector. Whether this same level of protection is obtained via an extension of scope of the current IORP Directive or by a separate prudential regime is for us not possible to reply on.	
19.	BNP Paribas Cardif	1.	BNP Paribas Cardif wants to point out that the Directive should apply to any IORP providing occupational pension schemes. Any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime. Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop. Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. BNP Paribas Cardif asks the Commission	Noted

			to examine this issue as suggested by EIOPA. A transitional solution could be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive BNP Paribas Cardif is fully supportive of a Quantitative Impact study (QIS) and strongly asks for an extension of the impact assessment to French life insurance products. The future directive should indeed reinforce occupational pension internal market across Europe and French life insurance is a huge retirement market within Europe. The study should address the following questions: fair competition among stakeholders and regulatory arbitrage avoidance.	
21.	BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASS. (BVCA)	1.	The BVCA believes that the scope of the Directive should not be extended Pensions provide social benefits rather than simply being financial products and, as such, provision is deeply ingrained in national social protection law. This means that the degree of homogeneity found in the financial services industry across Member States is lacking in IORPs due to their adaptation to specific national necessities according to the social nature of their role. Pensions legislation throughout Europe is currently a combination of European and domestic legislation. This lack of harmonisation therefore means that new or updated legislation will impact existing laws differently depending on the relevant jurisdiction The BVCA agrees that pension provision across Europe should be properly regulated but notes that this provision is diverse as is the way it is regulated and capitalised. Any attempt to impose a one size fits all approach will run immediately into this	Noted

			difficulty. The proposed changes to the IORP will directly impact the way in which pension funds are managed and invested, and therefore how returns can be provided to beneficiaries. Across the EU, the general objective of all Member States' regulatory provisions is the safeguarding of pension beneficiaries' claims at reasonable cost. How this is achieved, however, differs widely across national regimes. Indeed, national social and labour law may determine the content of the pension promise, set minimum governance requirements, determine the level of sponsor commitment and provide insolvency protection. This is the right approach, as Member States should be given sufficient flexibility to put in place appropriate retirement systems that are reactive to the socio-economic circumstances, needs and desires of their citizenry as well as the employers that fund those schemes. For example, the UK has an unusually large number of defined benefit pension schemes under which employers have significant funding obligations. Employers' funding obligations under scheme rules and overriding legislation are monitored and enforced by trustees who have fiduciary duties towards scheme members. There is legislation to require employers to make up funding deficits. The Pensions Regulator has strong and real powers to require employers and associated companies and persons to make payments to the scheme if the employer's obligations are not met and member's benefits are at risk. Ultimately, the Pension Protection Fund (funded by a levy on defined benefit schemes) exists as a "lifeboat" fund in the event that the aforementioned measures have failed adequately to protect scheme members. Such systems are not directly replicated in other Member States	

			so a 'one size fits all' approach for IORPs would be wholly inappropriate.	
22.	BT Pension Scheme Management Ltd	1.	We believe that the range of options laid out be EIOPA is right. While there have been significant developments to the pensions world in recent times, and to the broader investment environment, we do believe that Option 1, making no change, must remain an option openly considered.	Noted
23.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	1.	From the perspective of BAVC we agree basically with the analysis of the options as laid out in this advice, especially to not extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits to the institution but only to the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and PSV would intervene in the case of insolvency. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship. Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. As EIOPA suggests the dividing line between the different pillars of pension systems is not always clear - clarifying explanations might enhance a common understanding.	Noted

24.	BUSINESSEUROPE	1.	We agree with the proposal of EIOPA to retain the current scope of the IORP Directive, as applying to those forms of pension provision which are established by an employer(s) and/or where they have an essential role in the funding of the scheme. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	Noted
25.	BVI Bundesverband Investment und Asset Management	1.	In general BVI agrees with the analysis of the options.	Noted
26.	CEA	1.	The CEA agrees on the EIOPA approach on scope and welcomes the reference to article 4 of the current Directive. The CEA	Noted; not within mandate CfA, but

			wishes to stress that certain issues will arise for those countries currently applying article 4 and the entry into force of Solvency II and urges the Commission to take the necessary actions. It is also a fact that after the entry into force of Solvency II, there will be two very different regulatory frameworks at the EU level for long term guarantees forming part of occupational pension products. Given the Commission´s clear aim to take into account lessons learnt from Solvency II in relation to long term guarantees in the revision of the IORP Directive, this is not only an issue that affects Member States that have made use of the current article 4 and of article 2.2(b) but also important when it comes to ensuring an adequate level of protection at the EU level for these products regardless of whether they are offered by insurance undertakings our IORPs. In addition, the CEA agrees on the analysis of the options. However, the CEA wishes to point to the fact that the difference between option 1 – where member states have the option to include those institutions currently falling out of the scope on a voluntary basis - and option 2 – where partial application would be a Member State option - is very vague and needs further clarification. Finally, in line with the key principle of "substance over form", the CEA believes that the IORP Directive should apply to IORPs providing occupational pension schemes on a funded basis, regardless of how contributions are collected and whether they are subject to a voluntary agreement or legal obligation. In this context, the CEA welcomes EIOPA's intention not to touch upon the current exclusions of the IORP Directive. These exclusions mentioned in article 2.2 of the current IORP Directive should be retained. Although sufficient protection of these pension rights should be ensured outside the scope of this Directive. Additionally, in line with the OECD definition of occupational	EIOPA recommends, under "Other advice", that the Commission examines this issue. Agreed; wording amended to clarify the difference Noted

			pensions, the CEA would suggest to change the sentence in 4.5 EIOPAs advice paragraph 2 as follows: "For the purposes of this advice EIOPA assumes that 2nd pillar schemes are schemes were the employers - or groups thereof (e.g. industry associations) and labour or professional associations, jointly or separately - have a role in the establishment and/or funding of the scheme."	Agreed; wording amended.
27.	Charles CRONIN	1.	Yes, I agree with EIOPA's analysis of the options laid out in its draft advice.	Noted
28.	Chris Barnard	1.	I agree with the analysis of the options as laid out in the advice.	Noted
29.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. The CMHF is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be	Noted

			impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
30.	CONFEDERATION OF BRITISH INDUSTRY (CBI)	1.	The CBI believes that the scope of the Directive should in principle not be extended, unless new funding standards – which we oppose – create a distortion in the internal market The European IORP landscape is a very complex one. IORPs are wholesale products that by the nature of their activity are deeply integrated into national social protection systems and therefore regulated by national social and labour laws. This means that the degree of homogeneity found in the financial services industry across Member States is lacking in IORPs due to their adaptation to specific national necessities according to the social nature of their role. While the CBI agrees with the need to ensure that all forms of pension provision are properly regulated, we do not believe a one-size-fits-all approach under the IORP Directive can be the right way forward given this diversity. Across the EU, the general objective of all Member States' regulatory provisions is the safeguarding of pension beneficiaries' claims at reasonable cost. How this is achieved, however, differs widely across national regimes. Indeed, national social and labour law may	Noted

			determine the content of the pension promise, set minimum governance requirements, determine the level of sponsor commitment and provide insolvency protection. This is the right approach, as Member States should be given sufficient flexibility to put in place appropriate retirement systems that are reactive to the socio-economic circumstances, needs and desires of their citizenry as well as the employers that fund those schemes. Under the current regime, different European legislation governs different forms of provision based on the financial characteristics of the product. In those cases where a particular model is not covered – as can be the case in some newer Member States – social security legislation, both at EU and national level, fills in some of the supervisory gap. Furthermore, as illustrated in section 4 of EIOPA's draft response – dealing with the interaction between prudential regulation and social and labour law – any attempt to provide legal clarity on the interaction between the Directive and Member States' social and labour legislation could easily be a straight violation of the subsidiarity principle. In some new Member States the extension of the scope of the Directive would directly limit those Member States' competences on social and labour legislation. Thus, any attempt at extending the scope of the Directive to try and create a 'level playing field' in retirement provision would not only be extremely complex but would also create legal uncertainty through conflicting pieces of European and national legislation increasing costs for governments, employers and scheme members. For all these reasons, CBI members believe that the existing scope of the 2003 Directive should not be extended. However, this policy position is based on our overall opposition to the introduction of a Solvency II-style regime for IORPs. If despite	

			the overwhelming legal, regulatory and economic arguments against such regime, the European Commission chooses to propose higher solvency requirements on funded schemes with an employer covenant, then a review of the scope of the Directive then be necessary to ensure a level playing field is restored for all providers of defined benefit schemes.	
31.	De Unie (Vakorganisatie voor werk, inkomen en loop	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. De Unie is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners	Noted

			in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
32.	Derek Scott of D&L Scott	1.	No. The European Commission should surely state explicitly what it wishes to achieve from this review, supporting its assertions with evidence of how the current regime fails to meet those achievement objectives. Members of schemes and their representatives, i.e. member nominated fiduciaries and trades unions, should then be allowed to comment on how any new proposals are likely to affect them in both the immediate and longer term. There is a recent and long history of regulatory intervention, both here in the UK and also in the wider Community, adversely affecting the best interests of lower paid employees who rely heavily on a combination of first and second pillar pensions from the state and their occupational schemes.	Noted
33.	Direction Générale du Trésor, Ministère des finances, France	1.	Yes, we agree with the analysis of the options.	Noted
34.	Ecie vie	1.	We agree with the analysis of the options. This analysis should be applied to all institutions that offer retirement schemes (including insurance products) and address the following questions : fair competition and regulatory arbitrage avoidance.	Noted
35.	EFI (European Federation of Investors)	1.	This is a political issue and we don't have expertise on that. The important point is that any solution should ensure that all beneficiaries should be treated the same way, in terms of information, security of pension benefits etc..	Noted
36.	European Association of	1.	*Do stakeholders agree with the analysis of the options (including*	

	Public Sector Pension Institutions (EAPSPI)		*the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* EAPSPI agrees with EIOPA's analysis.	Noted
37.	European Central Bank, Directorate General Statistics	1.	No comments are provided on the preferred scope of the Directive, which is a policy decision that goes beyond statistical considerations. For the assessment of the possible use of data collected under the IORP for ESCB statistics it is, however, important to have a full understanding of the scope of the current and future IORP. For this purpose, please find below information on the definition of pension funds according to the draft European System of Accounts (ESA 2010), which applies for the ESCB statistical requirements. The ESA 2010 defines the sub-sector pension funds as follows: <u>Pension funds (S.129)</u> 2.105 Definition: The subsector pension funds (S.129) consists of all financial corporations and quasi-corporations which are principally engaged in financial intermediation as the consequence of the pooling of social risks and needs of the insured persons (social insurance). Pension funds as social insurance schemes provide income in retirement, and often benefits for death and disability. 2.106 Subsector S.129 consists of only those social insurance pension funds that are institutional units separate from the units that create them. Such autonomous funds have autonomy of decision and keep a complete set of accounts. Non-autonomous pension funds are not institutional units and remain part of the institutional unit that sets them up. 2.107 Examples of participants in pension fund schemes include	Noted

			employees of a single enterprise or a group of enterprises, employees of a branch or industry, and persons having the same profession. The benefits included in the insurance contract can be the following: a) paid after the death of the insured to the widow(er) and children; b) paid after retirement; and c) benefits which are paid after the insured became disabled. 2.108 In some countries all these types of risks can be insured by life insurance corporations as well as through pension funds. In other countries it is required that some of these classes of risks are insured through life insurance corporations. In contrast to life insurance corporations, pension funds are restricted by law to specified groups of employees and self-employed. 2.109 Pension fund schemes may be organised by employers or by general government; they may also be organised by insurance corporations on behalf of employees; or separate institutional units may be established to hold and manage the assets to be used to meet the pension entitlements and to distribute the pensions. 2.110 Subsector S.129 does not include: d) institutional units which fulfil each of the two criteria listed in paragraph 2.117 [i.e. social security funds with mandatory coverage or contributions and managed by General Government]. e) head offices which oversee and manage a group consisting predominantly of insurance corporations, but which are not insurance corporations themselves. f) non-profit institutions recognised as independent legal entities	

			serving insurance corporations, but not engaged in financial intermediation. It is understood that the IORP Directive refers to the same definition of autonomous pension funds.	
38.	European Federation for Retirement Provision (EFRP)	1.	The EFRP agrees with EIOPA that the question of scope is deeply political. The Commission and ultimately the Member States must agree on what they consider the appropriate and fair scope of the IORP Directive. The EFRP notes however, that one of the main drivers for the review of the IORP Directive was the desire to widen its scope. Now that EIOPA and the Commission have signalled that the extension of the scope will be more limited than foreseen and there is a more limited approach to the "level playing field" coveted by the EC, one of the main justifications given for the review by the EC disappears. The case for review is therefore weakened. The EFRP considers the mandatory funded pension systems found in the Central and Eastern European Member States to be part of the national social security systems of those countries, and therefore finds that they should fall outside the scope of the IORP Directive. Social security contributions are diverted to private providers through the national social security clearing houses. In contrast to the systems mostly found in Western European Member States, the employer has no role in the establishment of the scheme and there is no close link between the employer and the provider. The EFRP is in favour of a new analysis of Regulation 883/2004, of which schemes could be considered social security, before determining the scope of workplace pensions, which	Noted

			complements social security pensions. Agreement can then be found on what are truly "occupational pensions" and what are "1st pillar pensions" before revising the occupational pension framework. The idea of "member protection" of citizens covered by schemes falling outside the scope seems flawed, since social security systems do not really have "members". While consumer protection does not seem the appropriate form to deal with these issues of ensuring that guarantees are fulfilled and benefits are paid out, the EFRP would not be opposed to further coordination between member states, for example through the SPC or the OMC in order to improve protection of those covered by social security schemes carried out by private providers. EIOPA hints at the "clarification of the dividing lines between 1st, 2nd and 3rd pillar", which could "enhance a consistent application" of the IORP Directive (4.5.). The EFRP is very much in favour of, and would strongly encourage EIOPA and the Commission to adopt a typology or taxonomy of European pensions before further regulating this area.	
39.	European Fund and Asset Management Association (EFAMA)	1.	In general EFAMA agrees with the analysis of the options.	Noted
40.	European Metalworkers Federation	1.	Yes	Noted
41.	European Mine, Chemical and Energy workers' Federation (EMCEF)	1.	Yes	Noted
42.	FAIDER (Fédération des Associations Indépendantes)	1.	This is a political issue and we don't have expertise on that. The important point is that any solution should ensure that all beneficiaries should be treated the same way, in terms of	Noted

			information, security of pension benefits etc..	
43.	Federation of the Dutch Pension Funds	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. The PF is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not	Noted

			as affected by European regulation as we are.	
44.	Financial Reporting Council	1.	We have no comments.	Noted
45.	FNMF – Fédération Nationale de la Mutualité Française	1.	FNMF believes the different options are not complete. They do not take into account the impacts in terms of level playing field between pension schemes under the scope of the Solvency 2 directive and pension schemes under the scope of the IORP directive.	Noted; not within EIOPA mandate
46.	FNV Bondgenoten	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. FNV BG is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum	Noted

			harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
47.	Generali vie	1.	We agree with the analysis of the options. This analysis should be applied to all institutions that offer retirement schemes (including insurance products) and address the following questions : fair competition and regulatory arbitrage avoidance.	Noted
48.	GESAMTMETALL	1.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree basically with the analysis of the options as laid out in this advice. The position of EIOPA is correct, not to extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits towards the institution but only towards the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and our PSV would intervene in the case of insolvency. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship. Therefore the distinction between second and third pillar pension systems has to safeguard interests of pension	Noted

			savers and to ensure the functionality of the different national framework which include many labour law provisions. 1. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, respecting the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	
49.	Groupe Consultatif Actuariel Européen	1.	This is not an issue on which the Groupe has detailed expertise and some of the issues raised are primarily political in nature. We note that the Commission has stated that it does not wish to consider extending the Directive to include arrangements which are currently explicitly excluded by the Directive. However, with an HBS it would become technically feasible to cover some types of pension arrangement which are left out of the current IORP	Noted

			Directive. We agree with EIOPA's statement in 4.3.21 that Article 4 should be reviewed to adapt references to the Solvency 2 directive (and possibly some adjustment may be needed to the Solvency 2 Directive to accommodate the revised IORP Directive. In respect of the ring-fencing rules, there is an argument that the member state options should continue to exist in order to allow insured pensions to follow the set of rules best adapted to the nature of IORPs in that jurisdiction. Having said that, we do not have any comment on the analysis of the options laid out.	
50.	Groupement Français des Bancassureurs	1.	FBIA wants to point out that the Directive should apply to any IORP providing occupational pension schemes. Any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime. Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop. Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive	Noted

			2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. FBIA asks the Commission to examine this issue as suggested by EIOPA. A transitional solution could be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive FBIA is fully supportive of a Quantitative Impact study (QIS) and strongly asks for an extension of the impact assessment to French life insurance products. The future directive should indeed reinforce occupational pension internal market across Europe and French life insurance is a huge retirement market within Europe. The study should address the following questions: fair competition among stakeholders and regulatory arbitrage avoidance.	
51.	PMT-PME-MN Services	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. We are of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level	Noted

			is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
52.	HM Treasury/Department for Work and Pensions	1.	We agree that the scope of the Directive should not be extended. In particular, we agree with the conclusion that Book Reserve schemes should not be included, on the basis that Member States are required to protect employees rights in the event of insolvency of the employer. However, as per our response to Q2, we are of the view that if EIOPA recommends new solvency arrangements along the lines set out in the consultation, it must consider narrowing the scope to exclude sponsor-backed IOPRs, which have much more in common with Book Reserve schemes than with insurance products. That said, our overall position is that the case for new maximum harmonising solvency requirements has not been made, and that if the solvency position is not changed we do not see an argument for changing the scope of the Directive.	Noted

53.	IBM Deutschland Pensionskasse VVaG and IBM Deutsch	1.	We agree with the proposal of EIOPA to retain the current scope of the IORP Directive, as applying to those forms of pension provision which are established by an employer(s) and/or where they have an essential role in the funding of the scheme. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	Noted
54.	IMA (Investment Management Association)	1.	The IMA broadly agrees with the analysis of the options. In particular, we welcome the recognition that the "dividing line between 1st, 2nd and 3rd pillar is not always clear" (4.3.11). This is particularly the case given the nature of DC schemes, which in many cases will essentially be individual accounts whatever the underlying role of the employer or the legal structure of the scheme. We also agree that it is not the role of EU institutions to attempt to clarify the distinction.	Noted

55.	Institute and Faculty of Actuaries (UK)	1.	EIOPA has identified the need for "occupational" pension schemes to be treated appropriately and consistently across the EU and differently from other arrangements that have no direct employer involvement. We are glad EIOPA has started from this point as we believe it gives itself the freedom needed to devise regulations that are appropriate to the range of IORPs that exist across Europe. The purpose of the IORP Directive is to create an internal market for occupational retirement provision by setting the prudent person rule and making it possible to operate across borders within social policy objectives set at Member State level. The proposals in this consultation appear to constrain Member State social policy objectives by framing, if not defining, the level of solvency, risk management, governance, disclosure and administration that IORPs must meet. The scope of the Directive however only covers some such pensions institutions. Most notably, the Consultation proposes to define solvency requirements of funded defined benefit plans even where those requirements go against a Member State's social policy objectives but is not concerned, because of a definitional nicety, with the solvency requirements of unfunded plans. This seeks to put internal market financial considerations ahead of Member State social policy objectives. Our view is that, by contrast, the purpose of occupational pensions, and why Member States promote them, is to fulfil social policy objectives. In terms of scope, we agree with the exclusion of arrangements where the employee has a choice as to the direction of the monies to different institutions (such as the Pillar 1 bis institutions referenced in the draft response) as such institutions have no direct connection with the employer. However it would appear that the exclusion of contract-based occupational plans	Noted; book reserve schemes are not within EIOPA mandate

			(such as stakeholder or group personal pension plans in the UK) from the scope of the IORP Directive does not meet the stated objective to "create an internal market for occupational retirement provision", since these plans meet the general criteria for occupational provision. One way of addressing this would be to apply the IORP Directive to such plans. We recognise that the Commission intends to deal with such contract-based plans via a different Directive so do not feel able to respond fully to this consultation until we understand the Commission's intentions as to the broader picture around pension type provision.	
56.	Italian Banking Association	1.	The Italian Banking Association (ABI), representing the entire Italian banking industry with over 800 member banks, welcomes the opportunity to contribute to this EIOPA Call for Advice on the review of Directive 2003/41/EC (IORP Directive). The Italian banking industry is strongly committed to the supplementary occupational pension system, where banks and the controlled companies (asset management companies and investment firms) are involved as sponsor employers, undertaking institutions, distributors, professional asset managers, depositories. ABI agrees with the need to enhance the internal pension market through a greater harmonisation in the IORP Directive between pension schemes permitted to carry out cross-border activity. Our attention is mainly focused on the following items covered by this Call for Advice: • the scope of the IORP Directive • definition of cross-border activity • prudential regulations	Noted

			• security mechanisms • investment rules • general governance requirements ☐ outsourcing • custodian/depository • information to supervisors • information to members/beneficiaries.	
57.	Le cercle des épargnants	1.	We agree with the analysis of the options. This analysis should be applied to all institutions that offer retirement schemes (including insurance products) and address the following questions : fair competition and regulatory arbitrage avoidance.	Noted
58.	Macfarlanes LLP	1.	1. (CfA 1 Scope of the IORP Directive) *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree broadly with the analysis of the options, but the existing exclusion of book reserves from the Directive should be extended to cover defined benefit schemes. If book reserves are security for deferred pension promises by the employer, defined benefit schemes provide the same function, arguably to a higher degree, since in addition to statutory insurance assets in UK schemes of this nature are held in trust structures, which are legally separate from the employers business and which therefore ensure increased protection for members. There is no logical reason for not excluding defined benefit schemes from the Directive's application in the same way as book reserve schemes unless all other employer sponsored pension arrangements are to be brought within the Directive's ambit.	Noted

59.	Mercer	1.	We consider that clarifying the scope of the IORP Directive is fundamental to the EC's objectives to achieve a harmonised regulatory regime across all employer sponsored pension provisions. Because of this, we do not entirely agree with the analysis presented in Chapter 4 of the consultation. For example, paragraph 4.3.7 suggests book reserve schemes should remain outwith the scope of the IORP Directive because they are subject to Directive 2008/94/EC. But all employee remuneration, including funded occupational pension provision, is subject to that Directive. We respect individual member states' right to determine their own approach to social security, including how retirement provision should be established. However, since the way employers provide occupational provision necessarily takes into account the pension provided by the state, different models of employer provision have developed in different countries. These target different benefits using different benefit designs and different funding models. As the consultation document notes, this makes any attempt to determine which schemes should be in scope a political decision, but necessarily also, it means that attempts to 'harmonise' the prudential regulation of those schemes that are in scope will also be political, particularly in relation to those schemes that are outwith the scope of the Directive. If the premise is that pension provision that employees have contributed to directly or indirectly should be subject to a minimum level of prudential regulation, and this is not forthcoming from the member state, then we do not see why there is a distinction between how the provision is established (that is, whether it is implemented by the state or the	Noted; book reserve schemes are not within EIOPA mandate

			employer), or how it is financed (that is, whether it is provided on a funded, notionally funded, book reserve or pay as you go basis). If there is to be a distinction, then the regulation applied to those in scope of the Directive must be constructed in the knowledge that there is no level playing field and 'harmonisation' cannot be achieved. In particular, it must be sensitive to the anomalies created by the definition of 'scope' and the differences in provision created by each member state's social provision.	
60.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. The MHP is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with	Noted

			their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
61.	National Association of Pension Funds (NAPF)	1.	SCOPE *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* EIOPA has identified the full range of options for the future scope of the IORP Directive. We recognise that the pensions landscape has changed in at least two important respects – the growth of DC pensions and the advent of funded occupational pension provision in the Central and Eastern European Member States. However, these changes do not automatically mean that a new Directive is required, so Option 1 (leave the Directive unchanged) must remain on the table. EIOPA should also advise the Commssion to ensure that its policy-making is correctly sequenced. The first task – and one that should be completed before any changes to the scope of the IORP Directive – is for DG Employment to finish its review of Regulation 883/2004 (on posted workers), which has a major impact on which schemes are defined as social security schemes.	Noted

63.	NORDMETALL, Verband der Metall- und Elektroindustrie	1.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree basically with the analysis of the options as laid out in this advice. The position of EIOPA is correct, not to extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits to the institution but only to the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and PSV would intervene in the case of insolvency. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship. Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. 1. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for	Noted

			advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	
64.	Pan-European Insurance Forum (PEIF)	1.	The analysis seems broadly acceptable. In any event, should new wording be proposed to clarify scope, it should not result in exclusion of those providers currently falling under the definition of an institution for occupational retirement provision.	Noted
65.	Pensioenfonds Zorg en Welzijn (PFZW)	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. PFZW is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. Nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the	Noted

			IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
66.	Predica	1.	Predica wants to point out that the Directive should apply to any IORP providing occupational pension schemes. Any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form. Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop. Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the	Noted

			upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. Predica asks the Commission to examine this issue as suggested by EIOPA. A transitional solution could be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive Predica is fully supportive of a Quantitative Impact study (QIS) and strongly asks for an extension of the impact assessment to French life insurance products. The future directive should indeed reinforce occupational pension internal market across Europe and French life insurance is a huge retirement market within Europe. The study should address the following questions: fair competition among stakeholders and regulatory arbitrage avoidance.	
67.	prof.dr. A.A.J. Pelsser HonFIA, Netspar & Maastric	1.	Yes, we largely agree with the analysis. However, we recommend a different redefinition of the scope. (For an elaborate impact analysis, we refer to Chapter 3 of the attached Netspar Design Paper.)	Noted
68.	PTK (Sweden)	1.	PTK agrees with EIOPA that the question of scope is deeply political. It should however be noted, that one of the main drivers for the review of the IORP was the desire to widen its scope. Now that EIOPA and the Commission have signalled that there is a more	Noted

			limited approach to the "level playing field", one of the main justifications given for the review by the EC disappears. The case for review must therefore be considered to be diluted. PTK is in favour of a new analysis of Regulation 883/2004, of which schemes could be considered social security, before determining the scope of the internal pensions market which complements social security pensions. That will facilitate agreements on what are truly "occupational pensions" and what are "1st pillar pensions" before revising the occupational pension framework. PTK is also in favour of and would support EIOPA and the Commission to adopt a typology of European pensions before further regulating this area.	
69.	Railways Pension Trustee Company Limited (RPTCL)	1.	We have not considered this question.	Noted
70.	Sacker & Partners LLP	1.	CfA 1: Scope of the IORP Directive *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We believe that the current scope of the IORP Directive should not be extended, for example, to German book reserve schemes.	Noted
71.	Standard Life Plc	1.	☐ We agree with the analysis of the options. The IORP Directive should remain focussed on IORPs established by the employer and/or where the employer plays an essential part role in funding the IORP. ☐ We are concerned that the introduction of automatic enrolment in the UK may change the classification of personal	Noted

			pension plans, with these falling under mandatory occupational plans. Currently the Directive only applies to trust based pension schemes; personal pension schemes are out of scope because they are covered by other EU regulations. We believe that where an employee may not have taken any direct action themselves to set up the pension plan, these should still be considered personal pension plans under the Directive so as to comply with exceptions that have been made to allow for the introduction of auto-enrolment.	
73.	TCO	1.	TCO agrees with EIOPA that the question of scope is deeply political. It should however be noted, that one of the main drivers for the review of the IORP was the desire to widen its scope. Now that EIOPA and the Commission have signalled that there is a more limited approach to the "level playing field", one of the main justifications given for the review by the EC disappears. The case for review must therefore be considered to be diluted. TCO is in favour of a new analysis of Regulation 883/2004, of which schemes could be considered social security, before determining the scope of the internal pensions market which complements social security pensions. That will facilitate agreements on what are truly "occupational pensions" and what are "1st pillar pensions" before revising the occupational pension framework. TCO is also in favour of and would support EIOPA and the Commission to adopt a typology of European pensions before further regulating this area.	Noted
74.	Tesco PLC	1.	*Do stakeholders agree with the analysis of the option (including the positive and negative impacts) as laid out in this advice? Are*	Noted

			there any other impacts that should be considered? Across the EU we have many different types of arrangements - built out of differing social and labour laws. So a one-size-fits-all approach will not work given the level of complexity. Therefore we believe the current scope should not be extended unless the Pillar 1 changes as described in this paper are adopted creating significantly different financial burdens across different companies with different types of arrangement. In that situation it would become imperative that all retirement arrangements are considered in scope.	
75.	THE ASSOCIATION OF CORPORATE TREASURERS	1.		
76.	The Association of Pension Foundations (Finland)	1.	Clarification on 1st, 2nd and 3rd pillars would enhance dividing lines of application but it is very difficult political question to be made which features along or with other minor features are crucial to determine whether pension scheme belong to 2nd pillar and fall under directive 2003/41/EC. We are in favour of not to leaving the scope of directive as it is.	Noted
77.	The Association of the Luxembourg Fund Industry	1.	The Respondents agree with the deep and very helpful analysis and assessments of the different options established by EIOPA and prefer Option 3. The Respondents adhere to and support the proposal that the new EU Member States should be able to benefit from the advantages offered by the IORP Directive. Therefore, it appears absolutely necessary to us that the current scope of the Directive be adapted to include these new Member States' occupational retirement schemes that fulfil the same purpose and reply to the same need as in the existing Member States but which currently fall outside the scope of the Directive. It	Noted

			seems unacceptable to us that the residents of these Member States cannot benefit from the achievements of the common market in such an important matter (individually and collectively speaking) as retirement provisions.	
78.	THE SOCIETY OF PENSION CONSULTANTS	1.	In general yes. However, at the outset we must emphasise that we consider the time that has been permitted for consultation has been woefully inadequate, given the seriousness of the issues concerned and the wide ranging matters under consideration.	Noted
79.	UK Association of Pension Lawyers	1.	CfA 1 (Scope of the IORP Directive): *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in the advice? Are there any other impacts that should be considered?* We agree with the advice though believe it could be put more strongly and clearly. We believe that EIOPA should be clearer that the scope of the exclusions is not part of the CfA and therefore it is not giving any advice on that subject. As we understand it, EIOPA is saying that all existing occupational and personal pensions would be covered by IORP or other EU regulation and that the extension to non-occupational schemes that are not covered by other EU regulation would require the wholesale rewrite of those regulations and is therefore not recommended. If this is the advice, we agree with it, at least as far as UK schemes are concerned. We agree with the approach of not looking at schemes which are covered by EU regulation other than the IORP Directive but believe, again, that EIOPA should be clearer that it is not advising in relation to such schemes.	Noted Noted; book reserve

			We note that EIOPA proposes that the current scope of the IORP Directive is not to be extended, but is of the opinion that all types of pension schemes should be subject to high standards of governance and appropriate regulatory and supervisory standards. The exclusion of pay-as-you-go (book reserve) schemes seems to us to be most relevant in this respect. The fact that not all arrangements that provide retirement benefits for employees will be covered by the Directive, such as book reserve schemes, is relevant to and calls into question the justifications for legislative changes based on protection of members and beneficiaries. The vast majority of UK pension schemes – a very high proportion of the existing IORPs in the EU, as noted in our general comments at the beginning of this document (see Appendix 1) – are more akin to book reserve arrangements than to insurance businesses that are subject to Solvency II in that UK IORPs provide security for an employer's pensions promises. The major difference between IORPs and book reserve schemes is that IORPs have the added benefit of ring-fenced assets in addition to sponsor support and, in the UK, a pension protection scheme to give further protection to the employee against the risk of the employer's insolvency. In that sense, members of UK IORPs are already better protected than members of book reserve schemes. Any justification for excluding book reserve schemes from the prudential requirements of the Directive must apply equally or more clearly to such UK IORPs. They should therefore be carved out from the new proposals to the same extent as book reserve arrangement because security for such arrangements is already well covered by domestic and EU legislation (and is in fact better than for book reserve schemes). See also our comments in response to question 10 in this respect. We have no comments on the specific proposals for the	schemes no within EIOPA mandate Noted

			extension to DC schemes falling outside all EU prudential regulation as this does not affect the UK.	
80.	UNI Europa	1.	Yes	Noted
81.	Universities Superannuation Scheme (USS),	1.	SCOPE *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We recognise that the pensions landscape has changed in at least two important respects – the growth of DC pensions and the advent of funded occupational pension provision in the Central and Eastern European Member States. However, these changes do not automatically mean that a new Directive is required, so Option 1 (leave the Directive unchanged) must remain on the table.	Noted
82.	vbw – Vereinigung der Bayerischen Wirtschaft e. V.	1.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We agree basically with the analysis of the options as laid out in this advice. The position of EIOPA is correct, not to extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits to the institution but only to the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and PSV would intervene in the case of	Noted

			insolvency. The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship. Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. 1. There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU. As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.	
83.	Verbond van Verzekeraars	1.	In general, the Dutch Association of Insurers aims for a level	Noted

			playing field amongst all providers of financial services providing occupational pension products. Same risks, same requirements. To enhance the protection for members and beneficiaries it is crucial to have a minimum level playing field across Europe without too many Member State options and exclusions. The aim is to provide an adequate level of protection for all beneficiaries of occupational pensions throughout Europe. Other impacts should also be considered. In our view, improving regulatory consistency would reduce market distortions and undue cross-border arbitrage to the benefit of increased cross-border activities. We welcome the suggestion made by EIOPA to assess article 4. We are of the opinion that a thorough technical assessment of the operation of Article 4 should be conducted. Full regard needs to be taken of the role of life insurance enterprises in providing occupational pension products within their markets, whether under the Life Insurance Directive or the IORP Directive or a combination of both. We suggest that within this assessment of article 4 other possibilities than the national option to apply the related provisions of the directive to the occupational retirement business of insurers should be taken into account. This could be for example a possibility for insurers across Member States to 'opt in' for IORP regulation for their separated occupational pensions business. In addition, we think that there is a need to assess other possible effects of market distortion. Where IORPs have the benefit of special economic privileges, for example a sectoral monopoly due to a specific social mission granted under national law, this mission shall be stated in writing and published. Such providers should not be able to use their economic privileges to provide other products or enter other geographic markets either directly or indirectly via connected entities.	Noted; consideration of Article 4 option not within mandate CfA. Noted

84.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. The VHP2 is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. But nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	Noted

85.	Whitbread Group PLC	1.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
86.	Zentraler Immobilien Ausschuss e.V. (German Property Federation)	1.	The responsibility for pensions lies with the Member States. Retirement income systems in the various States have followed a very diverse path of development in last decades. The interaction between funded and non-funded elements as well as government, occupational and personal retirement provision varies greatly. A variety of security mechanisms exist in the Member States to ensure that security and reliability demands are met. These circumstances have to been taken into account in course of introducing a new European legislation. Furthermore, according to the discussed proposal the general layout of the supervisory system should, to the extent necessary and possible, be compatible with the approach and the rule used for the supervision of life assurance undertakings subject to the Solvency II-Directive. ZIA is of the opinion that there are important differences between IORPs and insurers which have to be taken into account. IORPs should be subject to solvency rules that are qualitative and risk-based in nature and respect of their character as social entities with recourse to the sponsor in case of underfunding. The focus of solvency rules should, therefore, be on the long-term ability to meet obligations as they fall due rather than on mitigation of short-term fluctuations. The Solvency II-rules do not fit occupational pensions in this respect. Hence, similar approaches to both insurance and IORPs are not appropriate.	Noted
87.	Zusatzversorgungskasse des Baugewerbes AG	1.	4. We regard this to be a question of highly political nature therefore we refrain from answering it.	Noted

88.	Towers Watson	1.	2. CfA 1 Scope of the IORP Directive *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?* We believe that if the Commission wishes to review the scope of the existing Directive, with the aims of harmonising the supervision of pillar 2 provision and enabling greater comparability across the EU, then that review should also address whether the current exemptions remain valid. This comment also applies to questions 2 to 4	Noted; review of exemptions not within EIOPA mandate
89.	OPSG (EIOPA Occupational Pensions Stakeholder G	2.	EIOPA has considered the most relevant options. The OPSG advocates that occupational and work place pensions (2rd pillar) should remain under a distinct regulatory framework vis a vis individual pensions (3rd pillar) that are contracted without any interference or support from the employer. Hence, the IORP Directive should not cover the individual, contractual based pension arrangements. Group personal pensions, however, with employer involvement should be under the scope of the reviewed IORP Dir. The implication of including private forms of retirement savings in the Directive is that the distinction between occupational pension provisions and individual private savings will be abandoned. Individual savers, acting alone and without the benefit of a social partner at their side, require different regulatory treatment than employees who also benefit from labour law provisions. At this point in time, the OPSG would oppose option 3 under which the IORP Directive may be applicable to all types of pension schemes that do not fall under any EU prudential regulation. EIOPA's draft advice rightly point out the issues at	Noted

			stake.	
90.	AbA Arbeitsgemeinschaft für betriebliche Altersversorgung e.V.	2.	No.	Noted
91.	ABVAKABO FNV	2.	See question 1, for political reasons we refrain from answering this question.	Noted
92.	AEIP	2.	We refer to our answer on question 1.	Noted
93.	AFPEN (France)	2.	AFPEN does not see any further option to be considered. Since EIOPA has already tabled this issue at the first consultation in July 2011 with five options including two further sub-options, AFPEN is of the opinion that EIOPA has covered all conceivable possibilities although it has to be admitted that due to the 140,000 pension institutions in the 27 EU Member States, their different embedding into the national pension framework and the still unsolved "pillar-classification", some pension schemes might still not be covered by these different options.	Noted
95.	AMONIS OFP	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* We see no other options that should be considered.	Noted
96.	ANIA – Association of Italian Insurers	2.	The ANIA believes that the options provided by EIOPA are sufficient. Furthermore the ANIA supports the Commission's view that book reserves should not be included in the IORP Directive but that employees' rights should be regulated on the basis of the Insolvency Directive (2008/94/EC) that should have appropriate supervision. In this regards, the ANIA welcomes EIOPA's recommendation to the Commission to consider the nature of the member protection in pension schemes falling outside the current scope and to take legislative initiative if it	Noted

			concludes that the protection offered by national/EU frameworks is not adequate.	
97.	Association Française de la Gestion financière	2.	A proposal to change the scope of the Directive should also include a discussion of an amendment of Article 4 to extend the optional application of the Directive to other regulated financial institutions. To the extent that there are financial institutions other than life assurance companies that offer occupational pension services, it is important to extend the optional application of the Directive to these institutions to ensure that the Directive does not lead to distortions of competition. The prevention of asset managers and other institutions such as banks from competing with pension funds and life-assurance companies on equal terms has led indeed to pension markets being dominated by a limited number of providers belonging to the latter categories. EIOPA should also address the fact that providers may be covered by another Directive, while being very active in the pension market. For instance, in France asset managers manage the funds of the Perco, and investment services companies and banks administrate the employees accounts. In these situations, it is unclear what rules should apply when a provider is covered by another directive and when this directive is not compatible with the IORP Directive.	Noted; not within mandate CfA.
98.	Association of British Insurers	2.	In the short time available, we have not been able to do sufficient analysis to develop other options.	Noted
99.	Association of French Insurers (FFSA)	2.	Not only occupational pension institutions but also any pension scheme that operates on a funded basis should be treated the same way. It would ensure that the rule "same risk, same capital" is respected. To ensure a real level playing field between stakeholders, Solvency II directive should be amended to fit to	Noted; schemes that are not occupational not within EIOPA mandate

			the future IORP's regime.	
100.	Assoprevidenza	2.	NO	Noted
101.	Assuralia	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* Cfr. Q1: the scope does not have to be changed (Option 1) if accompanied by specific measures to align the prudential regimes for insurance companies and IORPs involved in occupational pension provision.	Noted
102.	Bayer AG	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* No	Noted
103.	BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände)	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* No	Noted
104.	Belgian Association of Pension Institutions (BVPI-	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* We see no other options that should be considered.	Noted
105.	BNP Paribas Cardif	2.	Not only occupational pension institutions but also any pension scheme that operates on a funded basis should be treated the same way. It would ensure that the rule "same risk, same capital" is respected. To ensure a real level playing field between stakeholders, Solvency II directive should be amended to fit to the future IORP's regime.	Noted; schemes that are not occupational not within EIOPA mandate

106.	BT Pension Scheme Management Ltd	2.	We cannot identify alternative options beyond those identified.	Noted
107.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	2.	EIOPA has considered the most relevant options - There are no other options that should be considered.	Noted
108.	CEA	2.	The CEA believes that the options provided by EIOPA are sufficient. Furthermore the CEA supports the Commission's view that book reserves should not be included in the IORP Directive but that employees' rights should be regulated on the basis of the Insolvency Directive (2008/94/EC) that should have appropriate supervision. In this regards, the CEA welcomes EIOPA's recommendation to the Commission to consider the nature of the member protection in pension schemes falling outside the current scope and to take legislative initiative if it concludes that the protection offered by national/EU frameworks is not adequate.	Noted
109.	Charles CRONIN	2.	No I cannot think of any other options. I would support greater clarification to establish what an Occupational Pension Scheme is. From a regulatory standpoint I believe it would be helpful to develop clear divisions in the interpretation of Pillar 1, 2 & 3 schemes.	Noted
110.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	2.	See question 1, for political reasons we refrain from answering this question.	Noted
111.	De Unie (Vakorganisatie voor werk, inkomen en	2.	See question 1, for political reasons we refrain from answering this question.	Noted

	loop			
112.	Derek Scott of D&L Scott	2.	The Solvency II Directive for insurers is not fully operational until January 2013. Consideration as to whether pension schemes should be subject to a regime based on the capital requirements of the Solvency II Directive should surely await practical experience of operating under that new regime. This is particularly pertinent given that some of the consequences of the provisions agreed to within that Directive were not anticipated and are only now being realised. Other unanticipated issues – which might prove detrimental to pension schemes, members' benefits and the broader economy - will undoubtedly emerge, if past experience is anything to go by, and there is frankly no compelling case for urgent (if any) action. UK defined benefit liabilities account for over half of European funded defined benefit liabilities; thus appropriate weighting should be given to the views of UK stakeholders, particularly scheme members and their representatives. Regulation to date has, however, tended to be developed by professional advisers rather than by market participants and end users of occupational schemes or their representatives, i.e. member nominated trustees and trades unions. The business models of many of these professional firms are not aligned with the interests of those seeking to provide or to receive decent pensions on affordable bases, including contributory bases.	Noted
113.	Ecie vie	2.	The main question is: how ensure that the principle "same risk same capital" is respected.	Noted
114.	European Association of Public Sector Pension Institutions (EAPSPI)	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* EAPSPI does not see any further options to be considered. Since EIOPA already tabled this issue at the first consultation in July	Noted

			2011 with five options including two further suboptions, EAPSPI is of the opinion that EIOPA has covered all conceivable possibilities, although it has to be admitted that due to the 140,000 pension institutions in the 27 EU Member States, their different embedding into the national pension framework and the still unsolved "pillar-classification", some pension schemes might still not be covered by these different options.	
115.	European Federation for Retirement Provision (EFRP)	2.	The EFRP favours consistency of application, and therefore is in favour of including all occupational pension funds from all Member States in the scope of the Directive, and for excluding all those that are not occupational.	Noted
116.	European Fund and Asset Management Association	2.	A proposal to change the scope of the Directive should also include a discussion of an amendment of Article 4 to extend the optional application of the Directive to other regulated financial institutions. To the extent that there are financial institutions other than life assurance companies that offer occupational pension services, it is important to extend the optional application of the Directive to these institutions to ensure that the Directive does not lead to distortions of competition. The prevention of asset managers and other institutions such as banks from competing with pension funds and life-assurance companies on equal terms has led indeed to pension markets being dominated by a limited number of providers belonging to the latter categories. EIOPA should also address the fact that providers may be covered by another Directive, while being very active in the pension market. For instance, in France asset managers manage the funds of the Perco, and investment services companies and banks administrate the employees accounts. In these situations, it is unclear what rules should apply when a	Noted; issue not within mandate

			provider is covered by another directive and when this directive is not compatible with the IORP Directive.	
117.	European Metalworkers Federation	2.	Not to our knowledge	Noted
118.	European Mine, Chemical and Energy workers' Federation	2.	Not to our knowledge	Noted
119.	Federation of the Dutch Pension Funds	2.	See question 1, for political reasons we refrain from answering this question.	
120.	Financial Reporting Council	2.	We do not agree that EIOPA should have dismissed consideration of the inclusion of book reserve schemes within the scope of the IORP Directive on the grounds that the Commission is analysing the need to review Directive 2008/94/EC. In book reserve schemes the employer acts as sponsor and guarantor of the IORP. There is no separate entity acting as the provider of the pension, rather it remains a direct obligation of the employer. In theory the security of book reserve schemes is likely to be lower than IORPs which are distinct from the employer. We consider that there is additional security in having a separate entity because there is some diversification of risk away from the employer and there can be some independence in the governance of the IORP. However, for both types of scheme, it is the ability of the employer to continue to meet the retirement benefits as they fall due that is the ultimate security. For this reason, we consider it is anomalous that EIOPA is proposing that book reserve schemes remain outside the scope	Noted; book reserve schemes not within mandate CfA

			of the Directive while schemes which are essentially the same are brought within the scope. Indeed the proposals will penalise those employers which wish to offer additional security to members by establishing a separate IORP compared to those which do not.	
121.	FNV Bondgenoten	2.	See question 1, for political reasons we refrain from answering this question.	
122.	Generali vie	2.	The main question is : how ensure that the principle "same risk same capital" is respected.	Noted
123.	GESAMTMETALL	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact*. No	Noted
124.	Groupe Consultatif Actuariel Européen.	2.	This is a political issue.	Noted
125.	Groupement Français des Bancassureurs	2.	Not only occupational pension institutions but also any pension scheme that operates on a funded basis should be treated the same way. It would ensure that the rule "same risk, same capital" is respected. To ensure a real level playing field between stakeholders, Solvency II directive should be amended to fit to the future IORP's regime.	Noted; schemes other than occupational not within mandate CfA
126.	PMT-PME-MnServices	2.	See question 1, for political reasons we refrain from answering this question.	
127.	HM Treasury/Department for Work and Pensions	2.	If Book Reserve schemes are excluded from scope, the argument is equally strong for excluding all occupational pensions with an employer standing behind the scheme, regardless of whether it is a Book Reserve scheme, or a sponsored IORP. In the UK, the employer sets up a pension	Noted

			scheme and stands behind it. The IORP is the mechanism that delivers the benefit - but only exists in law as a separate structure because the Government requires it as a precondition of benefiting from tax advantages. However, the obligation to pay remains on the employer and the"pension promise" is part of the employment relationship, not a contract between the IORP and the member. The only material difference between a Book Reserve scheme and a sponsored IORP is the existence of assets held in trust to meet the liabilities, but this does not change the fact that the employer retains the obligation to pay. The scheme member of a sponsored IORP therefore has more protection than the scheme member of a Book Reserve scheme in the event of insolvency, not less. On that basis, if Book Reserve schemes remain excluded, then EIOPA should equally set out the case for (and against) amending the scope of the Directive to exclude sponsored IORPs. Furthermore, the immense difficulties of estimating the value of the sponsor covenant should provide EIOPA with ample evidence that alternative, more natural, approaches to the treatment of sponsored IORPs should be explored. EIOPA acknowledges that decisions on scope are of a political nature, and therefore beyond its remit. However, to preserve its political neutrality, EIOPA must explore and set out the case for (and against) all reasonable options - excluding certain options entirely from consideration would have the practical effect of taking a political stance.	
128.	IMA (Investment Management Association)	2.	We see no reason why the provisions in Article 4 for optional application of the Directive to insurance companies should not extend to other forms of financial provider, accepting that this would not require the carve out relative to Directive 2002/83/E that is currently at heart of Article 4. Rather, the Directive	Noted; issue not within mandate CfA

			would recognise that entities such as asset management firms would be able to operate as IORPs.	
129.	ING Insurance	2.	We suggest that within this assessment of art 4 other possibilities than the national option to apply the related provisions of the directive to the occupational retirement business of insurers should be taken into account. This could be for example a possibility for insurers across Member States to 'opt in' for IORP regulation for their separated occupational pensions business.	Noted;issue not within mandate CfA
130.	Institute and Faculty of Actuaries (UK)	2.	We would expect the positive impacts of the above proposal to widen the application of the IORP Directive to other occupational plans that currently fall under insurance regulation to be: a. Members would benefit from a wider and more general definition of IORP, leading to increased competition and a wider ability to allow cross-border activity b. IORPs and their sponsors would benefit from greater ability to allow cross-border activity with potential for increased efficiency c. Supervisors would benefit from greater standardisation of approach We would expect the negative impacts of the above proposal to be: d. None for members of DC plans, though the impact on insured DB plans needs to be considered e. None for IORPs and their sponsors, although the difficulty of defining what constitutes the IORP is considerable f. Difficulties of definition and hence jurisdiction for	Noted

			supervisors particularly in locations such as Ireland where the insurance and pensions regulators are separate organisations	
131.	Le cercle des épargnants	2.	The main question is: how ensure that the principle "same risk same capital" is respected.	Noted
132.	Macfarlanes LLP	2.	(CfA 1 Scope of the IORP Directive) *Are there any other options that should be considered? Please provide details including where possible in respect of impact.* See response to question 4. It would be useful to differentiate requirements for conventional company pension funds (whether or not IORPS) from those which are established in order to attract new customers or new transfers. The measures put forward by EIOPA appear intended to introduce a level playing field between insurance providers and competing IORPs, and legislation should be targeted only at those IORPs which do in fact compete. The vast majority of IORPs that are the subject of proposed regulation do not have any ability to market themselves or expand their activities; they are open only to employees of the sponsor group rather than the wider public. What we have described as conventional company IORPs are not relevant to a single EU market. There may be some IORPs and other pension arrangements such as the UK NEST which are designed to attract new customers, and as noted above these types of arrangements could be included.	Noted
133.	Mercer	2.	As mentioned, there is a case for EIOPA considering how the scope should be widened to include any scheme established by an employer, and any scheme that employers contribute to on their employees' behalf. There will, of course, be a financial impact on those brought into scope which, in the absence of a	Noted

			quantitative assessment on the current set of proposals, we are unable to detail. However, if the presumption in relation to those schemes within the scope of the Directive is that the benefit to members outweighs the cost of what is being proposed, then the argument must apply equally to other arrangements brought within scope. Our experience of book reserve schemes in Germany, for example, is that they are straightforward to provide, partly because they are subject to rules based regulation that is fairly light touch. There is a balance to be struck between simplicity and security. Our view is that simplicity is desirable, but that if this is a regulatory objective it needs to be applied consistently to all employer sponsored pension provision; similarly, clear targets for security might be desirable, but this also needs to be applied consistently.	
134.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	2.	See question 1, for political reasons we refrain from answering this question.	
135.	National Association of Pension Funds (NAPF)	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* No – NAPF sees no further options that should be considered.	Noted
136.	NORDMETALL, Verband der Metall- und Elektroindustr	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact*. No	Noted
137.	Pan-European Insurance Forum (PEIF)	2.	The options seem sufficient. Without pre-empting policy choices, we welcome EIOPA's suggestion that the issues surrounding Article 4 be examined. A decision on whether to modify or delete Article 4 (or modify Article 2) is possible only after the impact on current activity in	Noted

			the workplace by life insurers is fully understood. For example, extending IORP II to life insurers without taking into account the impact on current business could be disruptive. Furthermore, Article 4 is based on the assumption that it is possible to have a coherent regulatory regime based on mixing parts of the Life Insurance Directive and the IORP Directive, this assumption should be assessed. There is a need to ensure proper treatment of providers currently having to operate under Article 4 (level playing field issue).	
138.	Pensioenfonds Zorg en Welzijn (PFZW)	2.	See question 1, for political reasons we refrain from answering this question.	
139.	Predica	2.	Not only occupational pension institutions but also any pension scheme that operates on a funded basis should be treated the same way. It would ensure that the rule "same risk, same capital" is respected. To ensure a real level playing field between stakeholders, Solvency II directive should be amended to fit to the future IORP's regime.	Noted
140.	prof.dr. A.A.J. Pelsser HonFIA, Netspar & Maastric	2.	We propose the following adjustment of the scope of the IORP directive. 2. 1) Book reserves and pay-as-you-go-schemes: The current exemptions in the IORP Directive for book reserve schemes and pay-as-you-go schemes could be abolished. Including book reserve and pay-as-you-go schemes within the scope of a revised IORP Directive does not necessarily imply that such schemes are required to build up reserves. The ability to raise future contributions – in combination with the absence of insolvency risk (for example in case of industry-wide schemes) or possibly backed up by insolvency protection – may be regarded as an asset. Hence, the funding requirements in Article 16 of the IORP Directive do not need to be applied. 3. 2) Small pension institutions: A second adjustment of the	Noted; the issue of book reserves and pay-as-you-go schemes is not within mandate CfA.

			IORP scope could be realized by deleting the option (in Article 5 of) the IORP Directive for Member States not to apply this directive to small pension institutions. Exercise of this option by Member States can lead to a breach of the goal of equal protection of plan members and beneficiaries of occupational pension schemes. Supervision based on the provisions of the IORP Directive could turn out to be too heavy for small pension funds given their size, so that it could force such funds to wind themselves up. Such consequences might be avoided by the introduction of an option for small pension institutions for a kind of "simplified supervision". 4. 3) Pension schemes in new Member States: The IORP scope should also be modified by expanding its application to pension schemes which are currently not covered by the IORP Directive. A first modification of the scope to include these schemes would be to add a reference to them on the basis of a legal obligation in the definition of "institution for occupational retirement provision" in Article 6 of the IORP Directive. Such addition would cover existing schemes (primarily in the new Member States), where the provision of retirement benefits in the context of occupational activities is not based on an agreement or contract between employers and employees but on a legal obligation (see EIOPA, 2011, Par. 6.3.12). In addition to such amendment, the scope of the IORP Directive should in general be redefined to cover occupational pension institutions that operate collective pension schemes and in which all biometric and investment risks are economically borne by employers and/or (present or future) scheme members and beneficiaries. Such a redefinition has is very similar to one of the suggestions from EIOPA (2011, Par. 6.3, Option 4), namely the option to place under the IORP Directive all occupational pension providers that are neither covered by an EU prudential regulation nor guaranteed by a public authority, even when	Noted; the issue is not within mandate CfA. Noted.

			classified as social security schemes (for example in case of a classification as 1st or 2nd pillar). 5. The redefinition proposed by us, would prevent other institutions than occupational pension funds from falling under the IORP Directive, such as insurance companies and retail investment funds.	
141.	PTK (Sweden)	2.	PTK is in favor of including all occupational pension funds from all Member States in the scope of the Directive, and excluding all those that are not occupational.	Noted
142.	Railways Pension Trustee Company Limited ("RPTCL	2.	We have not considered this question.	
143.	Sacker & Partners LLP	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* We believe there are very strong arguments for excluding all occupational schemes which are supported by an employer from the scope of the Directive (for example, UK style sponsor backed IORPs as well as German book reserve schemes). With this type of arrangement, the obligation to pay pension benefits remains with the employer, unlike the position for insurance arrangements, where the insured has a contract with the provider. In attempting to harmonise the regime for pensions across the EU and impose Solvency II requirements to occupational pensions, the Commission has assumed that there should be a level playing field between insurance companies and pension schemes. This is not the case because the two are meeting very different objectives. Unlike insurance companies, sponsor backed IORPS do not	Noted

			operate by way of business. Instead, they exist to provide the benefits offered as part of an employer's remuneration package and have ongoing support from the employer, whereas an insurance company takes a one-off premium for providing an annuity.	
145.	TCO	2.	TCO is in favour of including all occupational pension funds from all Member States in the scope of the Directive, and excluding all those that are not occupational.	Noted
146.	The Association of the Luxembourg Fund Industry (A	2.	See Q 1	
147.	THE SOCIETY OF PENSION CONSULTANTS	2.	As we said in response to the consultation in July, we question whether the current exemptions should automatically be assumed to remain. We are aware that EIOPA is necessarily acting within the constraints imposed on it by the European Commission. However, we consider that the points at issue are too important for debate to be stifled in this way. Indeed, we consider it absolutely necessary to bring some of these points explicitly to the attention of the European Parliament, in order that there is an opportunity to have these aired in a democratic forum. Otherwise, we believe there is a significant risk that the European Parliament will be kept unaware of many key issues by reason of the Commission passing on a 'filtered' version only of the views expressed in this consultation process. We believe that a more fundamental review of the coverage of the Directive is intellectually more robust. We believe that EIOPA and the Commission should consider extending the scope of the Directive to all occupational retirement provision. After all, the European Court of Justice has long since held the view that pension provision is a form of deferred pay. It does not	Noted

			make sense for one form of pension provision to be included in a new 'risk-based supervisory system' and for another form to be excluded. We appreciate that politically this might seem attractively expedient to the European Commission, but we do not believe that political expediency should be the driver of European Union policy. At the very least, all arrangements currently excluded from the scope of the Directive should be included in the analysis under a detailed and quantified impact assessment and cost-benefit analysis. Currently, unfunded arrangements and those "guaranteed by a public authority" are excluded from the Directive. In the light of the current concerns about sovereign debt in many European countries, public authority guarantees might not be thought as secure as they were when the first IORP Directive was agreed. Against such a wider consideration of the Directive's scope, in the UK context, we suggest that there are strong reasons why so called group personal pensions should not be within scope. Firstly, since they are already covered under the Life Directive there would be regulatory overlap and, therefore, scope for confusion and uncertainty, if they came within the scope of the IORP Directive. Secondly, although group personal pensions are established with the support, often financial and/or in other forms, of an employer, they are, in fact, simply a collection of individual legal contracts, to which the employer is not legally party. It would therefore be difficult, through the IORP Directive to impose duties on an employer, in respect of an arrangement, to which it is not party.	Noted; current exemptions not within mandate CfA
148.	UK Association of Pension Lawyers	2.	CfA 1 (Scope of the IORP Directive): *Are there any other options that should be considered? Please provide details*	

			including where possible in respect of impact. We agree with the limited response made by EIOPA.	Noted
149.	UNI Europa	2.	Not to our knowledge	Noted
150.	Universities Superannuation Scheme (USS),	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact*. No comment other than to reiterate than until an impact assessment has been carried out these proposals should not be considered further.	Noted
151.	vbw – Vereinigung der Bayerischen Wirtschaft e. V.	2.	*Are there any other options that should be considered? Please provide details including where possible in respect of impact.* No	Noted
152.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	2.	See question 1, for political reasons we refrain from answering this question.	
153.	Whitbread Group PLC	2.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
154.	Zusatzversorgungskasse des Baugewerbes AG	2.	5. We refer to our answer on question 1.	
155.	Towers Watson	2.	3. *Are there any other options that should be considered? Please provide details including where possible in respect of impact.* If the objectives of the IORP Directive review include ensuring a	

			level playing field between insurance companies and IORPs and greater harmonisation of the supervision of IORPs across the EU exemptions should in our view be granted only on the grounds of proportionality or where there is an economic case for doing so.	Noted
156.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	3.	As stated under point 1, additional discussion is needed as to whether a review of the scope of the IORP Directive is necessarily required. However, the option proposed by EIOPA (4.5. Advice, 1st bullet) rightly frames the "scope" issue. The proposed option is a workable proposal for the immediate future. However, OPSG also notes that private institutions managing schemes under the scope of the Reg. 883/2004 and Reg. 987/2009 could be as institutions under the scope of the reviewed IORP Directive. Pension institutions delivering DC schemes – referred as pillar 1bis in EIOPA's advice – could be brought under the scope of the IORP Dir. implying that this Dir. be restructured to take into account the specificities of those DC schemes and the pension system for which they are designed.	Noted
157.	AbA Arbeitsgemeinschaft für betriebliche Altersver	3.	The AbA prefers Option 1 ("leave the IORP Directive unchanged") and strongly opposes Option 3. We believe that the IORP II Directive has to focus on all IORPs (as defined in Article 6 (a) IORP Directive) established by an employer and/or where the employer plays an essential role in the funding of the IORP. In addition, prudential supervision of IORPs is but one component of the overarching objective of providing adequate, safe and sustainable occupational pensions. That means in particular that there can be safe occupational pensions being	Noted

			excluded from the scope of the IORP Directive. Book reserve schemes are correctly excluded as the Directive's purpose is to provide a framework for the prudential supervision of institutions that fund retirement benefits. Book reserve schemes, at least in Germany, are provided by employers who are subject to social, labour and tax law but not prudential law as entitlements are secured by a nation-wide insolvency scheme (Pensions-Sicherungs-Verein). The same is true for Unterstützungskassen, institutions whose beneficiaries have no legal rights to benefits and whose sponsoring employer can redeem assets at any time and not necessarily meet its obligations for payment of retirement benefits.	
158.	ABVAKABO FNV	3.	See question 1, for political reasons we refrain from answering this question.	
159.	AEIP	3.	We refer to our answer on question 1.	
160.	AFPEN (France)	3.	AFPEN is in favour of option 1 and hence in line with EIOPA's conclusion in EIOPA's advice under n° 4.5 that "the current scope of the IORP directive is not to be extended". With respect to this examination, AFPEN believes that option 1 would be the best solution since in contrast to the other options 2 and 3, it has got no negative impacts. Even though option 1 offers not advantages, AFPEN, however, wonders whether the positive impacts of options 2 and 3 are really advantages for all involved persons and institutions. Regarding option 2, the mere enlargement of the scope of the IORP Directive does not constitute an advantage per se. Furthermore, the choice of Member States whether to apply the IORP Directive on a voluntary basis is already possible under the current legislation as EIOPA has identified in 4.3.25. Regarding option 3, AFPEN does not believe that the enlargement to all funded schemes would constitute a positive impact. AFPEN is rather of the	Noted

			opinion that this would be a disadvantage since this would imply to remove the reference to "occupational" as EIOPA has underlined in 4.2.29 since it would change basically the character of the IORP Directive	
163.	AMONIS OFP	3.	*Which option is preferable?* We have a preference for option 1 (no extension of the scope of the IORP Directive). The IORP Directive should in our view remain a directive focused on IORPs established by the employer and/or where the employer plays an important role in the funding of the IORP. The level of protection for the DC pension schemes such as the 1st pillar bis pension schemes, which are to be classified as personal pension schemes, should be covered by other national /EU frameworks, outside the scope of occupational pensions schemes. Even partial application (option 2) would in our view lead to difficulties to apply several provisions of the Directive, in the absence of a relationship between the employer and the pension scheme. This would create the need for specific requirements and increase the complexity of the IORP Directive.	Noted
164.	ANIA – Association of Italian Insurers	3.	The ANIA suggests excluding option 3 in line with our opposition to either removing or amending the reference to "occupational". Should certain countries be willing to include certain products under this Directive, they should do voluntary as a national option. Furthermore, since the difference between option 1 and option 2 is rather unclear, it is not possible for the ANIA to decide upon any of these options.	Noted
165.	Association Française de la Gestion financière (AFG)	3.	AFG supports option 2, but recommends to amend its formulation to a partial application of the IORP Directive to "all	Noted

			types of occupational pension schemes". This will create a European standard for IORPs and leave an option for member states to implement the IORP Directive when the time is right.	
166.	Association of British Insurers	3.	The ABI believes Option 1 is preferable; the scope of the IORP Directive should remain unchanged. Instead the focus should be on enabling more cross-border provision in the existing IORP market. This would seem consistent with the original intent of the review of the IORP Directive to enable more cross-border provision. We agree with the recommendation that the Commission consider the nature of the member protection in pension schemes falling outside the current scope and take legislative action if it concludes that the protection offered is not adequate.	Noted
167.	Association of Consulting Actuaries (UK)	3.	Option 1	Noted
168.	Association of French Insurers (FFSA)	3.	If we must answer between option 1 and 3, option 3 should apply whether they are regulated or not.	Noted
169.	Assoprevidenza	3.	Option 2 – See answer question 4	Noted
170.	Assuralia	3.	*Which option is preferable?* Cfr. Q1: the scope does not have to be changed (Option 1) if accompanied by specific measures to align the prudential regimes for insurance companies and IORPs involved in occupational pension provision.	Noted
171.	BARNETT WADDINGHAM	3.	Option 1	Noted

	LLP			
172.	Bayer AG	3.	*Which option is preferable?* We prefer Option 1.	Noted
173.	BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände)	3.	*Which option is preferable?* We prefer Option 1.	Noted
174.	Belgian Association of Pension Institutions (BVPI-	3.	*Which option is preferable?* We have a preference for option 1 (no extension of the scope of the IORP Directive). The IORP Directive should in our view remain a directive focused on IORPs established by the employer and/or where the employer plays an important role in the funding of the IORP. The level of protection for the DC pension schemes such as the 1st pillar bis pension schemes, that are to be classified as personal pension schemes, should be covered by other national /EU frameworks, outside the scope of occupational pensions schemes. Even partial application (option 2) would in our view lead to difficulties to apply several provisions of the Directive, in the absence of a relationship between the employer and the pension scheme. This would create the need for specific requirements and increase the complexity of the IORP Directive.	Noted
175.	BNP Paribas Cardif	3.	If we must answer between option 1 and 3, option 3 should apply whether they are regulated or not.	Noted

176.	BT Pension Scheme Management Ltd	3.	We believe that EIOPA has identified accurately the positives and negatives inherent in all three options. We note that EIOPA has not identified very significant benefits of any proposed extension of scope, and notes several limitations on any such extension, in terms of the difficulty of achieving a level playing field. It would seem to us that at present the case for change is unproven, and that an extension in scope should happen only if a fuller impact assessment identifies clear benefits which outweigh the costs.	Noted
177.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	3.	We prefer Option 1 (= no change of the IORP directive).	Noted
178.	BUSINESSEUROPE	3.	See answer question 1.	
179.	BVI Bundesverband Investment und Asset Management	3.	BVI has no strong view on the options provided, however we agree with EIOPA that an extension of the scope to private pension schemes would not be appropriate.	Noted
180.	CEA	3.	The CEA suggests excluding option 3 in line with our opposition to either removing or amending the reference to "occupational". Should certain countries be willing to include certain products under this Directive, they should do voluntary as a national option. Furthermore, since the difference between option 1 and option 2 is rather unclear, it is not possible for the CEA to decide upon any of these options.	Noted
181.	Charles CRONIN	3.	At this stage I support Option 1, to leave the current scope of the Directive unchanged, subject to further clarification of what is an occupational scheme. There is an opportunity in the revision of the current Directive to produce a highly harmonised	Noted

			successor. However this goal becomes more distant if the scope of the Directive is increased. I support EIOPA's suggestion (para. 4.3.18) that the European Commission explores regulatory and supervisory regimes outside occupational pensions, and proposes legal initiatives where it feels the protection offered is inadequate.	
182.	Chris Barnard	3.	This is a deeply political issue. Without further guidance from the Commission, I would support either option 1 or option 2. I agree with your doubts concerning option 3.	Noted
183.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	3.	See question 1, for political reasons we refrain from answering this question.	Noted
184.	De Unie (Vakorganisatie voor werk, inkomen en loop	3.	See question 1, for political reasons we refrain from answering this question.	Noted
185.	Derek Scott of D&L Scott	3.	Do nothing, unless/until question 1 is addressed.	Noted
186.	Direction Générale du Trésor, Ministère des financ	3.	We would favour a status quo in terms of scope considering the three proposed options. However, we have to pay great attention to the issue of the level playing field in terms of treatment with the non-professional retirement activity.	Noted
187.	Ecie vie	3.	We support a full application of IORP to all types of pension schemes.	Noted
188.	European Association of Public Sector Pension Institutions (EAPSPI)	3.	*Which option is preferable?* EAPSPI is in favour of option 1 and hence in line with EIOPA's conclusion in EIOPA's advice under n° 4.5 that "the current scope of the IORP directive is not to be extended". EIOPA has thoroughly examined all conceivable alternatives both in the first consultation of this summer and in the present document. With	Noted

			respect to this examination, EAPSPI believes that option 1 would be the best solution since in contrast to the other options 2 and 3, it has no negative impacts. Even though option 1 offers no advantages, EAPSPI, however, wonders whether the positive impacts of options 2 and 3 are really advantages for all involved persons and institutions. Regarding option 2, the mere enlargement of the scope of the IORP Directive does not constitute an advantage per se. Furthermore, the choice of Member States whether to apply the IORP Directive on a voluntary basis is already possible under the current legislation as EIOPA has identified in 4.3.25. Regarding option 3, EAPSPI does not believe that the enlargement to all funded schemes would constitute a positive impact. EAPSPI is rather of the opinion that this would be a disadvantage since this would imply to remove the reference to "occupational" as EIOPA has underlined in 4.2.29 since it would basically change the character of the IORP Directive.	
189.	European Federation for Retirement Provision (EFRP)	3.	The EFRP underlines that this is a deeply political issue. The EFRP prefers option 1: do not change the current IORP Directive. Option 2 should be rejected as the uneven application of the same rules across Member States would lead to an even more complex set of rules for IORPs and would present yet another obstacle to the further development of an internal market for occupational pensions. On a more fundamental level, this option would defeat the purpose of the scope debate, as it would create a more differentiated rules across Member States, thus creating more obstacles to cross-border pension provision. Option 3 should be rejected since it would blur the distinction between occupational and non-occupational pensions, or do	Noted

			away with the concept of "occupational". Since the current IORP Directive was adopted to reflect the specificity of occupational pensions, this option would take away the rationale for the IORP Directive itself.	
190.	European Fund and Asset Management Association	3.	EFAMA supports option 2, but recommends to amend its formulation to a partial application of the IORP Directive to "all types of occupational pension schemes". This will create a European standard for IORPs and leave an option for member states to implement the IORP Directive when the time is right. Trying to include funded scheme partially connected to the public social security regimes can have an adverse impact, because these realities are so different, that does not seem possible to harmonize their philosophy into a unique supervising model. With reference to the concern about the participants' protection, these funded schemes can have security mechanisms provided by the each Member State.	Noted
191.	European Metalworkers Federation	3.	Option 1	Noted
192.	European Mine, Chemical and Energy workers' Federation	3.	Option 1	Noted
193.	Federation of the Dutch Pension Funds	3.	See question 1, for political reasons we refrain from answering this question.	
194.	Financial Reporting Council	3.	We have no comments.	
195.	FNMF – Fédération Nationale de la Mutualité Française	3.	FNMF favours option 2, as long as level playing field is ensured between pension schemes under the scope of the Solvency 2 and pension schemes under the scope of IORP directive.	Noted

196.	FNV Bondgenoten	3.	See question 1, for political reasons we refrain from answering this question.	Noted
197.	Generali vie	3.	We support a full application of IORP to all types of pension schemes.	Noted
198.	GESAMTMETALL	3.	*Which option is preferable*? We prefer Option 1.	Noted
199.	Groupe Consultatif Actuariel Européen.	3.	This is a political issue.	Noted
200.	Groupement Français des Bancassureurs	3.	If we must answer between option 1 and 3, option 3 should apply whether they are regulated or not.	Noted
201.	PMT-PME-MnServices	3.	See question 1, for political reasons we refrain from answering this question.	Noted
202.	Hungarian Financial Supervisory Authority (HFSA)	3.	5. The HFSA does not support the extension of the IORP Directive to 1st pillar bis schemes and personal DC schemes for the reasons mentioned in the Call for Advice. 6. In Hungary and in other Central- and Eastern European countries that introduced 1st pillar bis schemes membership in such schemes is compulsory. 1st pillar bis schemes are part of the social security system. The extension of the scope of the IORP Directive would involve the inclusion of pension schemes where there is no role for the employer since these schemes are personal.	Noted
203.	HVB Trust Pensionsfonds AG	3.	HVB Trust Pensionsfonds prefers Option 1.	Noted
204.	IBM Deutschland Pensionskasse VVaG and IBM Deutsch	3.	See answer question 1.	

205.	IMA (Investment Management Association)	3.	The IMA welcomes the rethinking of options originally outlined in EIOPA's first consultation to the response on the Call for Advice, particularly the move away from Option 5. We still consider that 'no change' (Option 1) is a sensible starting point given that the Directive is about cross-border occupational pension schemes issues and not a pan-European prudential regime for pensions per se.	Noted
206.	ING Insurance	3.	ING supports a consistent application of the fundamental principle "same risk - same rules - same capital". Firstly, the coming risk-based framework should be well-adapted to the nature of occupational pension commitments. Secondly, a level playing field between different market players must be ensured. This means that all occupational-retirement-provision business of insurance should not be covered under Solvency II, but under the prudent person rules of the IORP directive. We believe the scope of the Directive should be strictly limited to Occupational Pensions, as are commonly referred to as second pillar, and offered by employers to employees. So we agree with option 1.	Noted
207.	Institute and Faculty of Actuaries (UK)	3.	Option 1 but with extension above	Noted
208.	Italian Banking Association	3.	Option 2 is preferable for ABI as clarified alongside the answer to question 4.	Noted
209.	Le cercle des épargnants	3.	We support a full application of IORP to all types of pension schemes.	Noted
210.	Macfarlanes LLP	3.	(CfA 1 Scope of the IORP Directive) *Which option is preferable*? Option 1	Noted

211.	Mercer	3.	None of the options presented in the consultation document appear to us to address the questions we have raised about the appropriate scope, in our answers to the previous questions.	Noted
212.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	3.	See question 1, for political reasons we refrain from answering this question.	
214.	Ministry of Social Affairs and Health in Finland	3.	Preferably to leave the scope of IORP Directive unchanged.	Noted
215.	National Association of Pension Funds (NAPF)	3.	Are there any other options that should be considered? Please provide details including where possible in respect of impact. No – NAPF sees no further options that should be considered.	
216.	NORDMETALL, Verband der Metall- und Elektroindustr	3.	*Which option is preferable?* We prefer Option 1.	Noted
217.	Pan-European Insurance Forum (PEIF)	3.	Option 1. In any event, should new wording be proposed to clarify the scope, it should not result in accidental exclusion of those providers currently falling under the definition of an institution for occupational retirement provision (including life insurers operating under Article 4). Nor should it result in the accidental inclusion of arrangements currently outside the IORP Directive.	Noted
219.	Pensioenfonds Zorg en Welzijn (PFZW)	3.	See question 1, for political reasons we refrain from answering this question.	
220.	Pensions Sicherungs-	3.	The PSVaG prefers Option 1 ("leave the IORP Directive	Noted

	Verein aG (PSVaG), Köln.		unchanged"). Reliable and sustainable occupational retirement plans are protected by a system of corporate provisions for pensions and documented accordingly in annual financial statements. If an employer becomes insolvent, the Pensions-Sicherungs-Verein (PSVaG) covers all non-forfeitable pension entitlements of its employees and pays current or future pension benefits in full for as long as said entitlements remain in effect. Please refer to "General comment" for information regarding procedures, insolvency protection and maximum coverage amounts. The same is true for pension relief funds ("Unterstützungskassen"), institutions whose beneficiaries have no legal rights to benefits and whose sponsoring employers can redeem assets at any time and must not necessarily meet their obligations to pay retirement benefits.	
221.	Predica	3.	If we must answer between option 1 and 3, option 3 should apply whether they are regulated or not.	Noted
222.	prof.dr. A.A.J. Pelsser HonFIA, Netspar & Maastric	3.	None of the options proposed by EIOPA, but the redefinition proposed by us under 2.	Noted
223.	PTK (Sweden)	3.	PTK prefers option 1: do not change the current IORP Directive. Option 2 should be rejected as the uneven application of the same rules across Member States would lead to an even more complex set of rules for IORPs and would present yet another obstacle to the further development of an internal market for occupational pensions. On a more fundamental level, this option	Noted

			would defeat the purpose of the scope debate, as it would create a more differentiated set of rules across Member States, thus creating more obstacles to cross-border pension provision. Option 3 should be rejected since it would blur the distinction between occupational and non-occupational pensions, or do away with the concept of "occupational". Since the current IORP Directive was adopted to reflect the specificity of occupational pensions, this option would take away the rationale for the IORP Directive itself.	
224.	Railways Pension Trustee Company Limited ("RPTCL	3.	We have not considered this question.	
225.	RWE Pensionsfonds AG	3.	RWE prefers Option 1	Noted
226.	Standard Life Plc	3.	Option 1 is preferable. The scope of the IORP Directive should remain unchanged and the focus should be on enabling more cross-border provision in the existing IORP market.	Noted
C 227.	Syngenta Limited	3.	No.	Noted
228.	TCO	3.	TCO prefers option 1: do not change the current IORP Directive. Option 2 should be rejected as the uneven application of the same rules across Member States would lead to an even more complex set of rules for IORPs and would present yet another obstacle to the further development of an internal market for occupational pensions. On a more fundamental level, this option would defeat the purpose of the scope debate, as it would create a more differentiated set of rules across Member States, thus creating more obstacles to cross-border pension provision. Option 3 should be rejected since it would blur the distinction	Noted

			between occupational and non-occupational pensions, or do away with the concept of "occupational". Since the current IORP Directive was adopted to reflect the specificity of occupational pensions, this option would take away the rationale for the IORP Directive itself.	
229.	THE ASSOCIATION OF CORPORATE TREASURERS	3.	Scope of the IORP Directive Which option is preferable? The IORP directive is focused on IORPs established by an employer and/or where the employer plays an essential role in the funding of the IORP. Trying to extend its application to pension arrangements like DC schemes cannot be the correct option since these are merely savings schemes not occupational schemes and have very different characteristics. We therefore agree with your option 1 that you leave the scope of the IORP directive unchanged. We agree with your advice that "Introducing an EU prudential regime for pension schemes where there is no such role for the employer would probably be more effective if done outside the IORP directive."	Noted
230.	The Association of Pension Foundations (Finland)	3.	We prefer the option 1. not to change current IORP directive.	Noted
231.	The Association of the Luxembourg Fund Industry (A	3.	See Q 1	
232.	THE SOCIETY OF PENSION CONSULTANTS	3.	We would prefer a different approach, with a review being undertaken as to whether all pension arrangements – funded, unfunded, statutory-backed and small arrangements etc… - should be brought within a 'risk-based supervisory' structure. We do not prejudge the outcome of that review. We merely	Noted; unfunded arrangements are not within mandate CfA

			recommend strongly that such a review should take place.	
233.	Trades Union Congress (TUC)	3.	Scope of the IORP Directive - *Which option is preferable*? As EIOPA have identified, defined contribution pension provision has grown considerably since the IORP Directive was passed. We recognise the need to leave Option 1 (leave the IORP Directive unchanged) on the table. We do think there is room to improve the provision of workplace provided DC schemes in Pillars II and III, regarding governance and disclosure requirements, which we return to later in this response.	Noted
234.	UNI Europa	3.	Option 1	Noted
235.	Universities Superannuation Scheme (USS),	3.	*Which option is preferable?*	
236.	vbw – Vereinigung der Bayerischen Wirtschaft e. V.	3.	*Which option is preferable?* We prefer Option 1.	Noted
237.	Verbond van Verzekeraars	3.	In our view, the objective should be to create a level playing field. Therefore we support option number 2: a partial application of the directive to all types of pension schemes that are not subject to EU legislation.	Noted
238.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	3.	See question 1, for political reasons we refrain from answering this question.	Noted

239.	Whitbread Group PLC	3.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
240.	Zusatzversorgungskasse des Baugewerbes AG	3.	6. We refer to our answer on question 1.	
241.	Towers Watson	3.	4. *Which option is preferable*? The review should either be ☐ broader in scope, or ☐ cover only those aspects directly related to facilitating cross-border provision - namely the 'cross-border activity' definition and the identification of the prudential regulation. This answer applies also to questions 2 and 4.	Noted
242.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	4.	The OPSG is not aware of any occupational pension schemes - in the meaning that the employer has a role in the establishment or/and the funding of the scheme – that do not fall in the scope of the IORP Directive, except for certain group personal pension schemes (see above). The OPSG supports EIOPA's draft recommendation to the Commission (re. last paragraph under "other advice") to "consider the nature of the member protection in pension schemes falling outside the current scope (…) and take legislative initiative if it concludes that the protection offered by national or EU frameworks is not adequate".	Noted
243.	AbA Arbeitsgemeinschaft für betriebliche Altersver	4.	Not in Germany (in addition see answer to question 3)	Noted
244.	ABVAKABO FNV	4.	For political reasons we refrain from answering this question.	

245.	AEIP	4.	We refer to our answer on question 1.	
246.	AFPEN (France)	4.	AFPEN agrees with EIOPA's findings under n° 4.3.26 according to which such borderline cases might later be covered by the national legislator in transferring the revised IORP Directive. AFPEN believes that especially due to the experience after the last financial crisis, beneficiaries' protection is of paramount interest both for the Member States and social partners. Therefore, AFPEN is of the opinion that such border line cases will be responsibly treated by transferring the revised IORP Directive into national legislation without any further EU legislation being necessary. As stated above the scope of the directive has to limit itself retired collective where there is a sponsor / employer who makes a commitment in the implementation of the plan.	Noted
247.	AMONIS OFP	4.	*Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?* There are no such pension schemes or border line cases in Belgium.	Noted
248.	ANIA – Association of Italian Insurers	4.	It is in particular important that Member States that today have opted for providers of occupational pension schemes to be regulated as life insurance - and thus in the future applying Solvency II - retain this possibility also in the future under a revised IORP Directive (maintenance of article 2.2(b)).	Noted; but issue not within mandate CfA
249.	Association of British Insurers	4.	The ABI is not aware of any such schemes or cases. However, please see our response to Question 1 regarding automatic enrolment in the UK. We remain concerned about the potential unintended consequences of a change to the scope. Currently the Directive	Noted

			only applies to trust based pension schemes; personal pension schemes are out of scope because they are covered by other EU regulations. The concern is that the introduction of automatic enrolment in the UK may change the classification of personal pension plans, with these falling under mandatory occupational plans. We believe that where an employee may not have taken any action to set up the pension plan, these should still be considered personal pension plans under the Directive.	
250.	Association of Consulting Actuaries (UK)	4.	None	Noted
251.	Assoprevidenza	4.	Yes. In Italy it could be some problems for "Open pension funds" held by banks and other financial institutions that can receive collective membership on the bases of a collective bargaining. This kind of funds could be excluded from IORP's Directive because they aren't autonomous for admistrative aspects but only with respects of assets, so exclusion ex art. 2.2.b) could apply. For these particular pension funds the same possibility offered by current art. 4 of IORP directive could be provided (following par. 4.3.27 of CfA).	Noted; advice has been amended with regard to the existence of borderline cases.
252.	Assuralia	4.	*Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention*? We are not aware of occupational pension schemes that are currently falling outside of the scope while not being explicitly excluded by IORP I.	Noted
253.	Belgian Association of Pension Institutions (BVPI-	4.	*Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention*?	Noted

			There are no such pension schemes or border line cases in Belgium.	
254.	BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASS. (BVCA)	4.		
255.	BT Pension Scheme Management Ltd	4.	We are not aware of any such cases.	Noted
256.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	4.	BAVC is not aware of any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.	Noted
257.	BUSINESSEUROPE	4.	See answer question 1.	
258.	CEA	4.	It is in particular important that Member States that today have opted for providers of occupational pension schemes to be regulated as life insurance - and thus in the future applying Solvency II - retain this possibility also in the future under a revised IORP Directive (maintenance of article 2.2(b)).	Noted; but issue not within mandate CfA
259.	Charles CRONIN	4.	I believe there is a border line issue concerning Group Personal Pension (GPP) plans on whether they are Pillar 2 or Pillar 3 schemes. These are Defined Contribution (DC) schemes, common to the UK, where the employer and the employee make contributions to a scheme managed by an external investment firm. The only two factors that differentiate a GPP from Personal Pension Plan are that (i) the employer contributes to the scheme and (ii) negotiates a discount on that firm's management charges. These discounts can disappear if the employee leaves	Noted; advice has been amended with regard to the existence of borderline cases.

			the employment of the employer. In effect the employer acts as a wholesale distributor for the investment firm, which seems to be outside the spirit of employee expectations in a scheme covered by the IORP Directive.	
260.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	4.	For political reasons we refrain from answering this question.	
261.	CONFEDERATION OF BRITISH INDUSTRY (CBI)	4.		
262.	De Unie (Vakorganisatie voor werk, inkomen en loop	4.	For political reasons we refrain from answering this question.	
263.	Derek Scott of D&L Scott	4.	There are bound to be, yes and yes. It is inequitable that unfunded arrangements are excluded from the Directive, when such arrangements are inherently less secure than funded plans. But the presumption that a single directive should attempt to cover all occupational pension schemes is presumptuous and, like so much pensions regulation of the last decade or so, will have unintended and harmful consequences for many long-suffering members of schemes and their dependants and other beneficiaries.	Noted
264.	European Association of Public Sector Pension Institutions (EAPSPI)	4.	*Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?* EAPSPI agrees with EIOPA's findings under n° 4.3.26 according to which such borderline cases might later be covered by the	Noted

			national legislator in transposing the revised IORP Directive. EAPSPI believes that especially due to the experience after the last financial crisis, beneficiaries' protection is of paramount interest both for the Member States and social partners. Therefore, EAPSPI is of the opinion that such borderline cases will be responsibly treated by transposing the revised IORP Directive into national legislation without any further EU legislation being necessary.	
265.	European Federation for Retirement Provision (EFRP)	4.	The EFRP does not identify any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.	Noted
266.	Federation of the Dutch Pension Funds	4.	For political reasons we refrain from answering this question.	
267.	Financial Reporting Council	4.	We are not aware of any such schemes or cases.	Noted
268.	FNV Bondgenoten	4.	For political reasons we refrain from answering this question.	
269.	Groupe Consultatif Actuariel Européen.	4.	This is a political issue.	
270.	PMT-PME-MnServices	4.	For political reasons we refrain from answering this question.	
271.	IBM Deutschland Pensionskasse VVaG and IBM Deutsch	4.	See answer question 1.	
272.	IMA (Investment Management Association)	4.	We are not aware of particular examples.	Noted
273.	Institute and Faculty of Actuaries (UK)	4.	None known	Noted

274.	Italian Banking Association	4.	ABI would like to direct EIOPA's attention to some Italian occupational pension schemes which are borderline cases in the IORP Directive. In more detail, ABI refers to occupational pension schemes offered by banks, asset management companies, investment firms and insurance companies pursuant to Law no. 252/2005 which: ☐ offers retirement benefits to subscriptions performed on the basis of collective agreements between employers and unions/employees, which identify the occupational pension fund chosen and the level of contribution both for employers and employees; ☐ do not have legal personality, but full segregation of liabilities and assets as well as common funds; ☐ are managed by authorized entities specifically supervised by COVIP (Italian supervisory authority on pension schemes, both occupational and individual) for satisfying professional, administrative and organisational requirements established by law and regulations for occupational pension funds; ☐ have specific governance requirements, in addition to those provided for the managing entities, mainly based on two different safeguards: i) the responsible party for the occupational pension scheme, in charge of verifying that the management of the scheme is carried out exclusively on behalf of the members/beneficiaries and consistently with legislative and regulation provisions; ii) surveillance committee made of two members designated by the managing entity and ten members designated from firms who have at least 500 employees on the pension scheme. These occupational pension schemes are borderline cases as:	Noted; advice has been amended with regard to the existence of borderline cases.

			☐ Art. 2.2 (b) of the IORP Directive explicitly excludes institutions which are covered by Directive 73/239/EEC, Directive 85/611/EEC, Directive 93/22/EEC, Directive 2000/12/EC and Directive 2002/83/EC; ☐ Art. 4 provides the option for Member States to apply Articles 9 to 16 and Articles 18 to 20 only to the occupational-retirement-provision business of insurance undertakings which are covered by Directive 2002/83/EC; ☐ Italy applied the IORP Directive to them as they are characterized by the effective role of employers in establishing and funding. Therefore, ABI proposes to amend the IORP Directive with an Art. 4-bis which extends to Member States the same option provided by Art. 4 to the occupational-retirement schemes of banks and investment firms covered by Directive 93/22/EC and asset management companies covered by Directive 85/611/EC. The approach adopted by Art. 4 and to be extended (according to ABI's proposal) to new Art. 4-bis implies a preference for option 2 (Partial application of the IORP directive to all types of pension schemes existing in some Member States that do not fall under any EU prudential regulation).	
275.	KPMG LLP (UK)	4.	The PSV in Germany and the PPF in the UK.	Noted
276.	Macfarlanes LLP	4.	(CfA 1 Scope of the IORP Directive) *Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention*? Yes. In terms of borderline cases, there could be corporate/non-insured buy out vehicles or trust based schemes that do not strictly relate to any employer or only notionally	Noted; advice has been amended with regard to the existence of

			relate to an employer. In the UK, industry-wide vehicles such as NEST and its competitors may be appropriate subjects for such regulation and may well be compared to insurance industry vehicles. See response to question 2.	borderline cases.
277.	Mercer	4.	Yes, for the following reasons: ☐ Some member states mandate a level of employer sponsored 'state' provision that is far greater than in other countries, so that additional, voluntary, employer sponsored retirement saving is at a far lower level. The circumstances in which provision should be considered as 'state' or 'employer' provided is therefore blurred. ☐ For historic reasons, some member states have permitted employers to establish occupational provision on a pay as you go or book reserved basis. Often employers establish reserves to ensure that they are likely to have sufficient cash to pay benefits as they arise, so in fact they are, implicitly, at least partially funded. Similarly, some funded employer provision is only partially funded. It seems inconsistent to treat these different arrangements differently, from the point of view of prudential regulation.	Noted Issue of book reserves and pay-as-you-go is outside mandate CfA.
278.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	4.	For political reasons we refrain from answering this question.	
279.	National Association of Pension Funds (NAPF)	4.	*Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?* -	

280.	Pan-European Insurance Forum (PEIF)	4.	-	
281.	Pensioenfonds Zorg en Welzijn (PFZW)	4.	For political reasons we refrain from answering this question.	
282.	prof.dr. A.A.J. Pelsser HonFIA, Netspar & Maastric	4.	Yes, see 2.	
283.	PTK (Sweden)	4.	PTK does not identify any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.	Noted
284.	Railways Pension Trustee Company Limited ("RPTCL	4.	We have not considered this question.	
285.	Sacker & Partners LLP	4.	-	
286.	TCO	4.	TCO does not identify any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.	Noted
287.	The Association of the Luxembourg Fund Industry (A	4.	See Q 1	
288.	THE SOCIETY OF PENSION CONSULTANTS	4.	Adopting the approach suggested in our response to 3 above should mean that none is excluded – from a review. Assuming that sufficient time is given for such a review, there would appear to be the attractive goal of ensuring that there are no gaps.	Noted
289.	Universities	4.	*Are there occupational pension schemes currently falling outside*	

	Superannuation Scheme (USS),		*the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?* -	
290.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	4.	For political reasons we refrain from answering this question.	
291.	Whitbread Group PLC	4.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
292.	Zusatzversorgungskasse des Baugewerbes AG	4.	7. We refer to our answer on question 1.	
293.	Towers Watson	4.	5. *Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?* See responses to 2 and 3 above	
294.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	5.	The OPSG welcomes the view that a more precise definition of cross-border activity is helpful to reduce or even to avoid any potential conflicting views between national supervisors and that this course of action could enhance cross-border activity of IORPs. However, the OPSG would like to highlight that the current definition of cross-border activity is not the reason for the limited prevalence of IORPs' cross-border activity. EIOPA has identified real barriers to cross-border pensions in sections 5.3.3; 5.3.4; 5.3.5 and 5.3.6. From an OPSG point of view, such barriers lie in the lack of detailed and comprehensive	

			information on host state social and labour law relevant to occupational pensions. Tax as well continues to be seen as a hurdle for cross-border provision of services. In addition, it should be noted that cross-border activity requires "full funding of pension liabilities at all times" and that this requirement imposes more onerous and inflexible funding than the funding rules in some member states which do allow for a temporary underfunding provided a recovery plan is put into place. As a consequence, going cross border is definitely not an attractive option for all those pension schemes in respect of which temporary underfunding is acceptable under domestic legislation. Furthermore, the limited number of cross-border schemes may reflect the fact that at this point of development of occupational schemes the corresponding pensions institutions have a purely domestic focus. In light of the request of the Commission on how to amend the wording of the IORP Directive in order to clarify that cross-border activity only arises when the sponsoring undertaking and the IORP are located in two different member states, the OPSG generally agrees with the analysis as set forward by EIOPA. Against this background, the OPSG would agree with EIOPA's proposal for a definition of the sponsoring undertaking except for the implied obligation to fund the pension scheme in the event of a funding shortfall arises (re. 5.3.13 and advice under 5.5.). The obligation to fund the shortfall is a feature normally embedded in a sponsor's covenant typical for defined benefit schemes (DB) but not in defined contribution schemes (DC). Since the reviewed IORP Directive is likely to include also occupational DC schemes, it is recommended to keep the definition of sponsoring undertaking neutral as to the type of	The argument on full funding agreed; inserted in the advice Comment on the definition of the sponsoring undertaking partially agree; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			scheme administered. Even if EIOPA wants to stick to the option requested by the Commission to clarify that cross border activity arises only when the sponsoring undertaking and the IORP are located in two different members, the OPSG would recommend investigating a different option where the Host State is defined as that whose SLL is applicable to the scheme . Since the logic of the IORP Dir. is that the prudential legislation is harmonized to a certain level while the SLL is to be respected for the benefit design, it seems reasonable that the Host Supervisor is the competent authority of the Member State whose SLL is to be applied to the scheme. The OPSG holds the view there should be a single Home Supervisor and one single Host Supervisor per Member State into which there is a cross border activity. It is possible then for an IORP to have to deal with multiple Host Supervisors but only one per Host Member State. The option proposed by EIOPA's draft response (re. 5.5. Advice, 6(j)) to amend Art. 20 is not supported by the OPSG. This proposal enhances complexities of a cross-border activity regime where it implies that for cross border activity between 2 Member States there could be 3 competent authorities involved bringing along – as rightly outlined by EIOPA – additional procedural steps. If one of the objectives of reviewing the IORP is to further cross border activity, the procedures to do so should be simplified and be made reliable and predictable to the largest possible extent.	Noted but outside mandate CfA. The set-up of the national supervisory structure is Member States' prerogative. Noted.
295.	AbA Arbeitsgemeinschaft für betriebliche Altersver	5.	We agree that there are many reasons (see sections 5.3.3, 5.3.4, 5.3.5 and 5.3.5) for the limited role of cross border schemes. However, we also believe that a more consistent interpretation of what is cross border activity may be reasonable. We, therefore, prefer Option 2 and agree with EIOPA's suggested amendments to Articles 6 (c) and (j) of the	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further

			IORP Directive. With respect to Article 6 (c), we have interpreted the last part of the definition after "or" to mean that a sponsoring undertaking may have a statutory or legally binding obligation to fund the scheme in the event of a funding shortfall but it also may not. We also agree that Article 20 of the IORP Directive may have to be amended, however, we would like to see further clarification of instances where the social and labour law of a third country would be applicable. We believe these instances would be very rare, however, should they occur, the prudential authority of the third country member state should, as a last resort, after all other channels have been exhausted, have the ability to effect puniary action against the IORP.	analysis The set-up of the national supervisory structure is Member States' prerogative
296.	ABVAKABO FNV	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response.	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the	

			use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
297.	AEIP	5.	31. AEIP agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. In this respect, also clarity is needed on what is covered by prudential regulations and social and labour legislation. 32. AEIP likes to stress that the respect of social and labour law, including compulsory membership and the existence of solidarity elements, together wiith the recognistion of the role of social partners in negociating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems. 33. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law" of the host Member State should be interpreted widely enough. 34. AEIP considers it more appropriate to link the definition of Host Member State to the state which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed.	Noted

			The requirement of full funding in case of cross border activity is contradictory to the principles of a single market.	
298.	AFPEN (France)	5.	To frame the definition of the activity cross to line AFPEN considers there is three entities: the sponsor of the fund, the fund and / populations of employees in geographical et local situations, with contract of employment referring to the labor law. All this must be considered in order to be able to set up a compartment in the fund (but see the next point about ring-fencing) with respects the applicable legislations) covered. If one of these entities is in another country then it is about an activity cross of lining.	Noted
300.	AMONIS OFP	5.	Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? AMONIS OFP agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. In this respect, also a clear definition is needed of what is covered by prudential regulations and social and labour legislation. It may happen that the sponsoring undertaking and the employer are not located in the same member state. Consequently, the social and labour legislation of another member state than the host state should be applicable in order to protect the members. This prevents in our view a simple definition of host state linked to the country of residence of the sponsoring undertaking. We therefore agree with the introduction of the requirement for IORPs to (also) respect the social and labour law applicable in the relationship between the employer and the (former) employees (irrespective of whether this is the law of the host member state). Moreover, in our view sponsorship from outside the European	Noted

			Economic Area (e.g. from a US mother company) should also be allowed. Therefore, we propose the following definitions: Home Member State: means the Member State in which the institution has its registered office or, if it does not have a registered office, its main administration; Host Member State: means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking or any other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity, and the members; Sponsoring Undertaking : means any undertaking or body (including a branch or subsidiary), regardless of whether it includes or consists of one or more legal or natural persons, which has a direct agreement with either the institution or the members and pays contributions into and/or supports the institution for occupational retirement provision, or which has a statutory or other legally binding obligation to fund the pension scheme in the event a funding shortfall arises. Cross-border activity : means the situation whereby an institution established in a Home Member State accepts sponsorship from a Sponsoring Undertaking located in another state, to manage a pension scheme subject to a Host Member State's social and labour law relevant to the field of occupational pension schemes;	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			It is in our view more appropriate to link the definition of Host Member State to the state which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking. If the above-mentioned definitions are adopted, Article 20 of the IORP Directive should be adapted so as to involve the State where the Sponsoring Undertaking is located, if this is not the Host Member State. Notwithstanding the foregoing, AMONIS OFP considers it of uttermost importance that the definition and thus the role of the Sponsoring Undertaking should be clearly defined in the light of a possible review of the "Valuation of Assets, Liabilities and Technical provisions" (CfA 5), the "Security Mechanisms" (CfA 6), the "Objectives and Pro-Cyclicality" (CfA 8) and the "General Principles of Supervision scope and transparency and accountability" (CfA 9).	
301.	ANIA – Association of Italian Insurers	5.	The ANIA agrees on the analysis of the options. Moreover, the ANIA supports the suggested changes to 'Sponsoring Undertaking' and 'Host Member State'. However, to avoid confusion the ANIA suggests changing the 'institution for the benefit of the employees' by 'institution'. Using "institution for the benefit of the employees" is not defined and could imply that this is another institution than the "institution" or the "institution of occupational retirement provision".	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis
302.	AON HEWITT	5.	We support the idea of a common definition of cross-border activity provided that the definition of "host Member State" retains a reference to the relevant social and labour law. A close	Noted

			link should remain applicable with the relevant social and labour law for occupational pensions that govern the relationship between sponsoring undertaking and members. To ensure greater convergence towards a common interpretation of cross-border activity (if not possible in the body of the Directive) such convergence of interpretation can be fostered through the follow-up implementation of a revised Budapest protocol backed by EIOPA or through level 2 measures. Option 2 as proposed by EIOPA risks artificially widening the number of cross-border cases and jeopardize the application of labour law. We agree with the proposed amendment of the definition of sponsoring undertaking included at point 7.3.11 of EIOPA CFA and covered by article 6.c of the Directive. It is worthwhile introducing a new reference to the sponsoring undertaking identified as the one who supports the plan.	the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis
303.	Association Française de la Gestion financière (AFG)	5.	We agree EIOPA proposal that Option 2 is preferable.	Noted
304.	Association of British Insurers	5.	The ABI agrees with the analysis of the options. It is not helpful to the development of cross-border activity if Member States use different definitions of what cross-border activity is. This creates difficulties with the notification, authorisation and approval processes for IORPs. The CP does however rightly highlight that, while the legal environment is not perfect, it is adequate for some cross-border activity, and that it is possible the lack of take-up is not due to failings of the IORP-Directive but due to lack of demand due to the differences in Member States' overall legal systems, specifically taxation. We also agree that Option 2 is a complex solution because several competent authorities are able to act against the same	Noted

			IORP. We would highlight the risk under Option 2 that IORPs become cross-border schemes accidentally where the parent company is in a different country to the IORP and its members. This could mean that schemes become cross-border schemes even where all the members and the IORP are in a single place. Therefore the IORP would have to comply with the funding requirements and requirements of cross-border schemes. We believe this should be avoided.	
305.	Association of Consulting Actuaries (UK)	5.	It is unfortunate that the question being asked of EIOPA does not have a wider scope to capture all the potential options set out in 5.2.2, but the following comments can be made: (a) If we look back at the spirit of the original directive, cross-border activity was envisaged to refer to situations where a sponsoring employer was in a different country from the IORP, i.e. where the sponsoring employer was using an IORP in a different country and therefore not subject to the regulation applicable to IORPs in the employer's own country. Therefore, the following should not be considered cross-border activity: an employer and an IORP both registered in State A with employees based in State B as well as in State A. After all, this was not cross-border activity requiring additional regulatory approval before the Directive was introduced. Instead, cross-border activity should in principle be where the sponsoring undertaking and the IORP are located in different countries, i.e. the first of the three approaches mentioned. This was the new option permitted and encouraged by the introduction of the Directive: the option for sponsoring undertakings to sponsor IORPs in countries other than their	Noted

			own. Accordingly, we support Option 2 in principle ("Amend the wording of the IORP directive to reflect the position that cross-border activity arises only when the sponsor and the IORP are located in two different Member States"). (b) However, the situation where a small number of internationally-mobile employees are sent to work in another country on a local contract unintentionally triggers the cross-border provisions of the Directive, and this has been a constant concern of employers. (Example: employer and IORP both registered in State A, employer sends an employee to work in State B on a local employment contract with its sister company in State B.) It may be advisable to insert "predominantly" into the appropriate place or places in Article 20 to "carve out" situations where the number of such employees is proportionately small. (c) The point made in 5.3.27 and 5.3.37 (IORP and members in State A, sponsoring undertaking in State B) should be dealt with, by having an appropriate definition of "sponsoring undertaking" that would be flexible enough to be able to be interpreted as being in State A in that case (e.g. by allowing branches of a parent company to be considered to be located in the State where the employees are located). (d) We support the addition of a requirement that the IORP should respect the applicable social and labour law (e) Prior to the implementation of any option there should be a thorough impact assessment to avoid unintended consequences. An example of an unintended consequence of the position as outlined by EIOPA would be the proposed definition of 6 (c), where the suggested wording would mean that if for instance,	

			the French parent company of a British company provided a parental guarantee to the Trustees of the British pension fund (which provided benefits only to British employees) then the fund would be considered cross-border in nature. This is likely to deter foreign parent companies from providing such guarantees, thus reducing member security which is hardly the intention of the Directive.	
306.	Association of French Insurers (FFSA)	5.	Yes and in any case, the possibility of any regulatory arbitrage should be avoided.	Noted
307.	Assoprevidenza	5.	We agree with the analysis of the options as laid out in the advice. A clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. The respect of social and labour law, including compulsory membership and the existence of solidarity elements, together with the recognition of the role of social partners in negotiating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems. The provision "without prejudice to social and labour law" of the host Member State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labor law.	Noted
308.	Assuralia	5.	CfA 2: DEFINITION OF CROSS-BORDER ACTIVITY The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	

309.	Bayer AG	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice*? We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. 2. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable. As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural	Noted Agreed; included in the advice.

			reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	
310.	BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände)	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. 2. Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. 3. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the	Noted

			main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable. As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	Agreed; included in the advice.
311.	Belgian Association of Pension Institutions (BVPI-	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* BVPI-ABIP agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. In this respect, also a clear definition is needed of what is covered by prudential regulations and social and labour legislation. It may happen that the sponsoring undertaking and the employer are not located in the same member state. Consequently, the social and labour legislation of another member state than the host state should be applicable in order to protect the members. This prevents in our view a simple definition of host state linked to the country of residence of the sponsoring undertaking. We therefore agree with the introduction of the requirement for IORPs to (also) respect the	Noted

			social and labour law applicable in the relationship between the employer and the (former) employees (irrespective of whether this is the law of the host member state). Moreover, in our view sponsorship from outside the European Economic Area (e.g. from a US mother company) should also be allowed. Therefore, we propose the following definitions: Home Member State: means the Member State in which the institution has its registered office or, if it does not have a registered office, its main administration; Host Member State: means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking or any other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity, and the members; Sponsoring Undertaking : means any undertaking or body (including a branch or subsidiary), regardless of whether it includes or consists of one or more legal or natural persons, which has a direct agreement with either the institution or the members and pays contributions into and/or supports the institution for occupational retirement provision, or which has a statutory or other legally binding obligation to fund the pension scheme in the event a funding shortfall arises. Cross-border activity : means the situation whereby an institution established in a Home Member State accepts sponsorship from a Sponsoring Undertaking located in another state, to manage a pension scheme subject to a Host Member	the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			State's social and labour law relevant to the field of occupational pension schemes; It is in our view more appropriate to link the definition of Host Member State to the state which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking. If the above-mentioned definitions are adopted, Article 20 of the IORP Directive should be adapted so as to involve the State where the Sponsoring Undertaking is located, if this is not the Host Member State. Notwithstanding the foregoing, BVPI-ABIP considers it of uttermost importance that the definition and thus the role of the Sponsoring Undertaking should be clearly defined in the light of a possible review of the "Valuation of Assets, Liabilities and Technical provisions" (CfA 5), the "Security Mechanisms" (CfA 6), the "Objectives and Pro-Cyclicality" (CfA 8) and the "General Principles of Supervision scope and transparency and accountability" (CfA 9).	
312.	BIPAR	5.	BIPAR believes that measures should be taken to ensure that pensions can be issued cross-border. In its answer to the European Commission's consultation on the Green Paper "towards adequate, sustainable and safe pension systems", BIPAR indicated that it supports initiatives tackling the hindering of cross-border activity and cross-border pensions. If the amending of Article 6, as proposed by EIOPA, tackles	Noted

			indeed the hindering of cross-border pensions and increases in the end the number of cross-border IORPs, then BIPAR can only welcome EIOPA's advice on this point. However, we also pointed out in our answer to the Green paper that we believe that cross-border provision of pensions, especially occupational pensions, will not be achieved as long as the regulation in the several Member States is fragmented. These differences extend across the likes of tax, employment law and social aspects (see below our comments related to Pension Information Centre).	
313.	BNP Paribas Cardif	5.	Yes and in any case, the possibility of any regulatory arbitrage should be avoided.	Noted
314.	BP plc	5.	Legislation on cross-border IORPs should have two aims: 1. to facilitate genuine cross-border plans such as a pan-European plan situated in one state with members in several other states, whilst maintaining appropriate safeguards for members, and 2. to avoid situations where a plan which is not truly cross-border is treated as one, e.g. a UK IORP with predominantly UK employees is treated as cross-border because some of its members move to work for a subsidiary employer in another state. In general we consider that consistency between states on when a plan should be considered cross-border would be helpful, and this may be facilitated by a more specific definition in the directive. Option 2 would be one possibility and would resolve	Noted

			some situations such as set out in 2 above. However, as acknowledged in 5.3.27, it could introduce other issues. We suggest that a more detailed analysis of the directive should be undertaken to arrive at a definition which deals with all of the possible scenarios.	
315.	BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASS. (BVCA)	5.	-	
316.	BT Pension Scheme Management Ltd	5.	We are yet to be convinced that there are significant barriers to cross-border pension provision arising from the pensions regime, and especially from the definitions within that. Rather, we believe that the main barriers to cross-border provision arise from variations in tax and social security rules. We therefore do not believe that these proposed changes will have significant impacts.	Noted
317.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	5.	We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. BAVC would like to highlight that the current definition of	Noted

			cross-border activity is not the reason for the limited prevalence of IORPs' cross-border activity, but is due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. Tax as well continues to be seen as a hurdle for cross-border provision of services. 1. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable.	
318.	BUSINESSEUROPE	5.	The lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. Noted From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a	

			disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable. As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	
319.	BVI Bundesverband Investment und Asset Management	5.	We agree.	Noted
320.	CEA	5.	The CEA agrees on the analysis of the options. Moreover, the CEA supports the suggested changes to 'Sponsoring Undertaking' and 'Host Member State'. However, to avoid confusion the CEA suggests changing the 'institution for the benefit of the employees' by 'institution'. Using "institution for the benefit of the employees" is not defined and could imply that this is another institution than the "institution" or the "institution of occupational retirement provision".	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis
321.	Chris Barnard	5.	Broadly yes. More emphasis could be given to the diversity and complexity of pension arrangements, and the difficulty in	Noted

			integrating a pension arrangement with different Member States' SLL and tax treatments. This is the main reason for the lack of demand for cross-border activity here. I personally believe that proposing option 2 is a very bold step.	
322.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response).	

			We are not convinced that this approach is the way forward.	
323.	CONFEDERATION OF BRITISH INDUSTRY (CBI)	5.	The lack of consensus around the definition of cross-border activity means no changes should be made at this stage The proposal included in the draft response does not achieve consensus across Member States. The proposal to amend the definition of 'host' member state to reflect the position in respect of location of the sponsoring undertaking does not address all of the outstanding issues currently faced by employers looking to set up these schemes. This new definition would not take into account, for example, the location of scheme members and beneficiaries. This means that while the IORP could be subject to the prudential law of the 'home' member state, the sponsoring employer would be subject to social and labour law in the 'host' member state. This would lead to different regulatory regimes impacting the sponsoring employer, which ultimately funds the scheme, significantly increasing bureaucratic and financial costs. Ultimately, the key obstacle to a broad consensus in the definition of cross-border activity is the heterogeneity of IORPs because of their fundamental social role at national level. As the draft response clearly states, there is no possibility of further promoting the single market on pensions without undermining the subsidiarity principle on social and labour law, a move which is unacceptable. This is why the CBI believes little more can be achieved beyond the current text of the IORP Directive. We would encourage EIOPA to abandon its proposal for a review of the definition.	Noted
324.	De Unie (Vakorganisatie voor werk, inkomen en	5.	In principle we agree with the analysis of the options and the impacts as laid out in this	Noted; the amended advice refrains from

	loop		advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as	proposing a definition of sponsoring undertaking and suggests further analysis

			follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
325.	Derek Scott of D&L Scott	5.	If, as suggested, the review is an endeavour to facilitate the development of cross-border pension plans, the Commission should publish evidence from social partners of the appetite for such plans. Furthermore, the new regime should apply only to those pension funds that are 'open' to new members/participants. Any pension funds that are closed to	Noted

			new members will not be used for cross-border purposes, so cannot possibly be hindering the development of such arrangements. Clarification of (a) the definition of cross border activity and (b) what is prudential regulation versus social and labour law is welcomed. However, if the Commission contends that harmonising funding regimes is necessary to deliver broader cross-border pension provision, it should publish evidence to demonstrate this, including that such harmonisation is a proportionate measure for achieving this.	
326.	Ecie vie	5.	Yes	Noted
327.	European Federation for Retirement Provision (EFRP)	5.	The EFRP agrees that the current definitions are insufficiently precise. The EFRP also notes with satisfaction point 5.3.20., which states that "it is possible that the lack of take-up is not due to failing of the Directive or Member States interpretations, but to other reasons such as a basic lack of demand". The complexities of national Social and Labour Law and tax laws are among these reasons, as are practical difficulties in the cooperation between prudential supervisors and other Host State agencies, as well as cultural barriers. The EFRP agrees with the new proposed definitions of "host member state" and "sponsoring undertaking". The EFRP would point out that there are a limited number of cross-border situations where the present definitions may lead to different interpretations. In these situations, we would call for a flexible application of the rules and to keep in mind the purpose of stimulating mobility of workers and of facilitating cross-border IORP activity. The EFRP would warn against including the power for Host State	Partially agreed; added to the advice. The amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			supervisors (or authorities of the Member State of the SLL) "to take measures against the IORP", as proposed by EIOPA in its final paragraph of chapter 5.5. (p.35). One of the prerequisites for more cross-border workplace pension provision is having one supervisor for cross-border IORPs, which in the EFRP's view should be the Home State supervisor (except where SLL is concerned).	
328.	European Fund and Asset Management Association (EFAMA)	5.	We agree EIOPA proposal that Option 2 is preferable. However, there is a danger with option 2 that IORPS become cross-border schemes accidently where the parent company of the sponsoring undertaking is in a different country to the IORP and the members. This could mean that schemes end up being cross-border even where all the members and the IORP are in a single place. The funding requirements and registration requirements of cross border schemes would then kick in, this will have significant impact on DB schemes which are not fully funded. This should be avoided.	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis
329.	European Metalworkers Federation	5.	EMF agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different Member States. In this respect also clarity is needed on what is covered by prudential regulations and social and labour legislation. EMF wants to stress that the respect of social and labour law, including compulsory membership and the existence of solidarity elements, together wiith the recognition of the role of social partners in negociating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law" of the host Member	Noted

			State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law. EMF considers it more appropriate to link the definition of Host Member State to the state in which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed. The requirement of full funding in case of cross-border activity is contradictory to the principles of a single market.	
330.	European Mine, Chemical and Energy workers' Federation	5.	EMCEF agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different Member States. In this respect also clarity is needed on what is covered by prudential regulations and social and labour legislation. EMCEF wants to stress that the respect of social and labour law, including compulsory membership and the existence of solidarity elements, together wiith the recognition of the role of social partners in negociating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law" of the host Member State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law. EMCEF considers it more appropriate to link the definition of Host Member State to the state in which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the	Noted

			Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed. The requirement of full funding in case of cross-border activity is contradictory to the principles of a single market.	
331.	Federation of the Dutch Pension Funds	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response).	

			We are not convinced that this approach is the way forward.	
332.	Financial Reporting Council	5.	We have not formed any views on this analysis.	
333.	FNV Bondgenoten	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	

334.	Generali vie	5.	Yes	Noted
335.	GESAMTMETALL	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as "social institutions" for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. 2. Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. 3. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation	Noted

			of national social and labour laws, would not be acceptable nor realistic. As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	Partially agreed; added to the advice.
336.	Groupe Consultatif Actuariel Européen.	5.	There is no disagreement that the home state is where the IORP is established and prudentially regulated, but there are different approaches to defining the host state (which may lead to the sameconclusion in practice): 1. the states whose Social and Labour Law applies to the members 2. the state where the sponsoring employer is established 3. nationality of the IORP We agree that the different interpretation has led to some difficulty in practice, and that clarity is desirable, although we would question the view expressed in paragraph 7.3.2 that this has had a major negative impact on the establishment of cross border IORPs (as is recognised in paragraph 7.3.13). The Call for Advice explicitly requested that the Directive be amended to define cross border activity by reference to the location of the sponsoring undertaking i.e. approach 2 above. The draft response notes that approach 1 considers the position	Noted

			from the perspective of the members, whereas approach 2 is looking at it from the employer's perspective. Difficulties will arise when the IORP is in country A, the sponsoring employer in country B and the members in country C. Under option 2, the social and labour law applicable to the members would be that of B, although they are working in C. In our view, approach 1 is the most appropriate basis for determining the host state or states in relation to an IORP operating cross-border. We agree with the response in relation to the need for clarity around the sponsoring employer i.e. is it the parent company, or the subsidiary or branch in the country where the members work – and we support the proposed amendment to Article 6(c) in this regard.	
337.	Groupement Français des Bancassureurs	5.	Yes and in any case, the possibility of any regulatory arbitrage should be avoided.	Noted
338.	PMT-PME-MnServices	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already	

			seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
339.	HM Treasury/Department for Work and Pensions	5.	We have no particular view on the options. However, in the analysis, EIOPA should explore the purpose of promoting cross-border IORP activity – in particular looking at the intrinsic link to the employer, rather than considering IORPs as a financial product for which there is a direct market. Legislation, and the definition of cross-border IORPs, should be designed to support employers that operate across EU borders and that wish to establish a single IORP across their business. Whether the definition and subsequent legislation does so effectively should be the success criterion for the review.	Noted
340.	IBM Deutschland Pensionskasse VVaG and IBM Deutsch	5.	The lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to	Noted

			see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable. As highlighted in the constulation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	Partially agreed; added to the advice.
341.	IMA (Investment Management Association)	5.	It is important to ensure greater consistency across the EU. However, in changing the definition of cross-border activity, there is always the danger of unintended consequences. One potential issue with Option 2 could be the creation of accidental cross-border schemes where the sponsoring undertaking is in a separate country (possibly outside the EU) from both the IORP and its members, which could be in the same member state. This would need to be addressed. A more general comment arises from the conjecture at several points within this section (eg. 5.3.4-5.3.5) about the reasons why cross-border market activity is very small. As we note earlier in this response, in a national and EU policy-making environment that is increasingly characterised by evidence-based policy decisions, it is surprising to us to see these	Noted

			questions left unaddressed while quite significant policy adjustments are proposed that may (or may not) result in improved outcomes for scheme members.	
342.	ING Insurance	5.	ING agrees that the current legal environment may not be perfect, but the main reason cross-border pension provision is not widespread is the fact that pension provision has to apply to the labour law, pension law, tax law and language of the resident's home country.	Noted
343.	Institute and Faculty of Actuaries (UK)	5.	The Consultation does not consider all the options. 5.2.2 lists the three definitions in common usage by Member States today but EIOPA has limited itself to consideration of only one particular option – that proposed by the Commission. Furthermore the Commission/EIOPA have not stated why they are proposing one particular definition of cross border activity. We believe they should present the arguments for and against all the options to enable a fair and proper assessment of them by stakeholders. We are therefore not able to provide as considered a response to this question as a more balanced question would have permitted. Our general observation is that no evidence has been presented by EIOPA to support one definition of cross border activity over another, each approach has advantages and disadvantages. There are also transition issues arising for Member States with existing cross border IORPs operating under the other models to the one that will be chosen as the basis for a harmonised model (assuming it is decided to adopt a harmonised model). The different implementations of this part of the IORP Directive	Noted; consideration of other options is not within the CfA mandate

			demonstrate that these provisions are ambiguous. It follows that there is a risk of unintended consequences in changing the current definition and consequently that a full impact assessment and consultation with national regulators should be conducted before making any such changes. Although we believe stakeholders should be presented with a relative comparison between the options in 5.2.2, we broadly agree with the analysis of the particular option presented as compared to status quo. However, we believe some additional considerations are appropriate: (a) There is anecdotal evidence that multinationals in some countries – fearful of having an IORP that they sponsor being considered to engage in cross-border activities – ensure that their employees working temporarily (or for an extended period) in Member States outside the Home Member State cease membership of the Home Member State IORP. This must be entirely contrary to the intentions of the IORP Directive, and the clear preference of the Member and the Employer, but it is inevitable that more employers will take this route if the chosen harmonised definition of cross-border activity increases the likelihood of cross border activity being triggered by temporary moves . (b) EIOPA should also recognise the importance from a risk management perspective that: (i) the IORP is clear, and can always be clear, on the benefits it is obliged to provide (ii) the IORP sponsor is not exposed to the risk of having the IORP being forced to apply for recognition as a cross-border IORP (on account of a member or members inadvertently being considered to be cross-border members), and	

			iii) the impact of retrospective application of a new, different definition of cross border activity to IORPs that signed up to being an IORP under the previous definition. (c) We are aware of no evidence that companies with employees in more than one Member State are prevented from establishing an IORP to conduct cross border pension provision. We believe that such companies choose not to conduct cross border pension provision because of the risk of regulatory creep, the differing taxation regimes, the differing social security regimes etc. or because they have no significant interest in establishing a cross border IORP, particularly in these difficult economic times. Revision to definition 6(c) a. We point out that the revised definition is likely to lead to some IORPS seeking guarantees or funding protection from parent companies in another Member State being refused by their sponsor (or their sponsor's parent) on the grounds that such guarantees/protection would potentially constitute cross-border activity, particularly if revised capital requirements are introduced. From an operational perspective, we would see it as a requirement of good administrative practice, and risk management, that the IORP, Employee and Sponsor are clearly identified and identifiable in every case. We conclude that it is more appropriate that Home Member States establish guidelines – appropriate to the IORPs they regulate – to inform and supplement the definition in the Directive, rather than seek to have an extensive definition in the Directive that covers all possible situations.	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis
344.	Italian Banking	5.	ABI agrees with EIOPA's advice on how the wording of the IORP	Noted

	Association		Directive needs to be amended in order to clarify that cross border activity arises only when the sponsoring undertaking and the IORP are located in two different Member States.	
345.	Le cercle des épargnants	5.	Yes	Noted
346.	Macfarlanes LLP	5.	2. (CfA 2 Definition of cross border activity) *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* No. The background analysis and options are over complicated. Some of the options create material negative impacts for particular businesses and schemes, which are both unnecessary and unjustified. Cross-border activity has been inhibited principally because of the immediate full funding obligations included in the current Directive and because of the bureaucratic interpretation of social and labour law requirements by some Member States. 3. The proposed amendment of Articles 6(c) and (j), as set out in paragraph 5 of EIOPA's advice would immediately convert some schemes from operating purely in the national sphere to becoming cross-border schemes, with the immediate full-funding obligation that this entails. Many schemes within the EU operate with parent company guarantees. A UK scheme which has the benefit of a guarantee from its German or Italian parent, for example, would immediately be treated as a cross-border scheme, although the guarantor is not the sponsor in the accepted sense. The result could have serious financial implications for some EU groups with UK subsidiaries, without there having been any change in circumstances and where there is already proper member protection under domestic law and the current Directive. As previously discussed, this retrospective amendment of a company's obligations could be open to challenge, and is likely to be viewed with dismay by	Noted Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			investors in European business.	
347.	MAN SE	5.	We do not think that EIOPA has understood how serious the effect is of amending the IORP Directive to establish that cross border activity exists when an employer is located in a country different from its employees, even when the pension scheme is registered in the same country as the employees. The MAN UK Group Pension Scheme is registered in the UK and covers employees of our UK companies but MAN SE in Germany is the Principal Employer under the Scheme. It does not contribute directly but it has provided a form of guarantee that could lead to contributions in certain circumstances. We have gone to some lengths to design the occupational schemes we offer to our employees so that they could not inadvertently be considered cross border under current legislation. If the legislation is changed in the way that is proposed then, to maintain existing provision, we would have to incur further expense to reorganise our arrangements to ensure they continue to meet with our objectives. The likelihood is that we could not justify this expense, particularly in the current financial climate, and so we would replace the provision we have with different schemes that impose a lighter regulatory burden on us, as provider, and lesser pensions security for our employees. At the same time, we are likely to reduce the level of provision that we make, to restore the balance of cost between our shareholders and our employees that was intended when the schemes were first established. We have been told that EIOPA's role in relation to the Call for Advice is just to help the commission achieve its objectives, rather than advise on the appropriateness of the objectives themselves. However, we understand that the Commission views EIOPA as its source of expert advice on occupational pension provision. If EIOPA does not point out to the	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			Commission the financial impact on employers and shareholders of its advice and the likely impact on the level of employee retirement provision then how is the Commission able to form an educated view on how to legislate for voluntary employer sponsored retirement provision? We consider strongly that EIOPA should revise its advice in relation to the definition of cross border schemes so that the status quo in relation to [the XYZ Ltd Pension Scheme], which we understand applies in nearly all member states where cross border schemes have been established, is maintained.	
348.	Mercer	5.	We do not agree that the proposed Option 2 will result in clear definitions across all member states. The difficulties in relation to the current definition of 'host member state' have arisen due to the different ways in which member states transposed the IORP Directive into their national legislation. Our view is that the similar issues are likely to arise if the IORP Directive is amended as suggested: the structure of employment relationships and agreements and the ultimate liability to contribute to pension schemes in respect of shortfalls, for example, are potentially very complex. In addition, the suggested approach will remove the link between social and labour law and where the members work. This is likely to produce further negative impacts not highlighted in EIOPA's draft response. For example: ☐ Some schemes where the IORP and the members are in a single member state will become 'cross border' because the sponsoring undertaking (for example a bank with a local branch structure) is located in another member state. ☐ Employees in one member state could be members of an IORP with its main administration in another member state and with an employer in a third member state. In this example,	Noted

			neither the regulation nor the social and labour law applying to the IORP would have any connection with the members. ☐ In the previous example, if the sponsoring entity was based outside the EEA, then even though the members and the IORP were based in different member states, it would not be considered cross border; and if it were, then what social and labour law should apply to the members? Other potential negative impacts include: ☐ Removing the link between the location of the member and the "host country" by redefining host country as the location of the sponsoring undertaking presents the possibility of employers structuring their cross border arrangements to choose the host country on the basis of perceived less onerous social and labour law. Any such arbitrage would be likely to damage the image of cross border pension provision. ☐ Removing the link between the members' location and applicable social and labour law (SLL) risks producing scenarios where members in one country are covered by the SLL of another country. The design of the section of the scheme covering these employees however will still be shaped by the need to meet local requirements for tax approval, and the need to reflect local social security and mandatory provision. The likelihood is that the SSL of one country will not sit well with a scheme section designed for locals of another country. ☐ This would make the task of clearly communicating members' benefits and rights more difficult. Rights with which members are familiar in their own country (for example indexation) may not apply, and other features more appropriate to entirely different pension regimes (such as rules around transfer values) may apply.	

			The suggestion to address these concerns is that Article 20 could be amended "to give the ability to the authorities of the member state of the SLL (i.e. another member state than the home and host member states) the right to take measures against the IORP, and the introduction of a requirement that the IORPs should respect the applicable social and labour law, irrespective of whether that is the law of the Host Member State". However, this would add further significant layers of complexity, undermining the objectives of providing clarity and encouraging the establishment of cross border schemes. We consider that the IORP Directive should consider member interests in establishing the rules that underlie cross border provision: that is, it would be preferable to institute a regime that provides appropriate protection to scheme members' benefits, regardless of where the scheme is located, whilst respecting the social and labour law members are subject to because of the member state they are legally resident in. This would also reflect employers' objectives when establishing pension arrangements for employees. The location of the employer seems irrelevant to this. Consequently, the provisions in Article 20 seem to us to make more sense if the 'host member state' for the sponsoring undertaking is associated with the legal residence of the employees, rather than the undertaking's location. In our view, the current definition of host member state achieves this, by implicitly referencing the legal residential status of the employee, rather than the employer. If it is unclear in that respect, then our preference would be for this to be clarified, rather than for it to reflect the employer's status. We also observe that the distinction drawn between cross border	The advice with regard to article 20 has been clarified.

			IORPs in paragraph 7.2.2 of the consultation issued in July 2011 on the first draft response to the Call for Advice is not as clear cut as was suggested. For example, where there is a distinction between the IORP and the 'scheme' (for example, the Netherlands), this generally vests the scheme around the members' employment contracts, so that defining cross border schemes in relation to the nationality of the scheme can be identical to defining it in relation to the relevant social and labour law.	
349.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would	

			push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
350.	National Association of Pension Funds (NAPF)	5.	DEFINITION OF CROSS-BORDER ACTIVITY *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* EIOPA's response should start by urging the EC to identify clear evidence of where the definition has obstructed cross-border pension provision. The response should also point out that the real barriers to cross-border pensions lie in tax and social security systems, not in pensions legislation. Furthermore, the low number of cross-border schemes does not reflect inadequate legislation; it reflects a lack of demand. Most occupational pension schemes have no ambition to provide pensions in other Member States. The EC should first conduct research to establish the potential number of cross-border schemes, based on the number of truly multi-national companies operating across the Internal Market. This work should recognise that many multi-nationals also operate beyond the borders of the EU.	Noted
351.	NEST Corporation	5.	NEST was created to address a recognised gap in the supply side of occupational retirement provision in the UK before the demand side change created by the onset of new duties	Noted

			requiring employers to make pension arrangements for all UK-based workers who meet certain statutory conditions. The definition of a worker in the UK in the new employer duties is not entirely the same as the definition of a Qualifying Person within the terms of the UK's implementation of 'cross-border activity'. This could have led to significant costs being incurred by a large number of UK-based institutions for occupational retirement provision (IORPs). Most of this cost would have come from the confusion identified in paragraph 5.3.5. Having identified this issue, the UK Government has taken an enabling power to allow it to introduce a domestic legislative solution to distinguish between a UK worker for the purposes of the new employer duties, and a Qualifying Person for the purposes of the UK implementation of cross-border activity, should this become necessary. We agree that any simplification of the cross-border regime should reduce the costs of a scheme wishing to operate on a cross-border basis. However, these simplifications should be framed in such a way as to facilitate, not force, an expansion of an internal market. Defining what constitutes 'social and labour law' and what constitutes 'applicable prudential regulation' would represent real progress in simplifying this area. Of the possible solutions, we feel that the solution proposed in this paper – to create cross-border activity where the sponsor is located in a different European economic area (EEA) jurisdiction to the IORP – is the most workable. However, the revised definition of Sponsoring Undertaking is a potential problem where a subsidiary and parent located in different jurisdictions both have responsibilities for funding.	

352.	NORDMETALL, Verband der Metall- und Elektroindustr	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. 2. Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. 3. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable.	Noted

			As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	Partially agreed; added to the advice
353.	Pan-European Insurance Forum (PEIF)	5.	A uniform definition of cross border activity across all Member States would be a useful starting point and would remove scope for confusion. However, in itself clarifying the definition of 'cross-border activity' is unlikely to result in any substantial increase in cross border activity. Option 2 is in fact a way of reinforcing Option 1. Regulatory transparency needs to be improved. Member States should be encouraged to identify their social and labour law and its financial services implications. Care needs to be taken that any adjustment to the current definition of sponsor does not affect the scope of the directive as the definition of an IORP depends on the definition of a sponsor. EIOPA's remarks about the state of the social and labour law being potentially different from the home and host States seem correct. A Level 2 or Level 3 solution seems appropriate. The Directive should make clear that other cross-border arrangements are not prohibited. For example, in situations where employees and the IORP are located in one country and the employer in another; or where all three are in different countries. IORP II should include provisions that support	Noted

			practicable treatment of such situations. In the same context, looking to the future, treatment of cross-border provision pensions to pensioners located in different countries from the IORP should also be possible. It may be useful to explore to what extent the approaches in the Solvency II Framework Directive and the IORP Directive could be made more consistent.	
354.	Pensioenfonds Zorg en Welzijn (PFZW)	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in social and labour law regimes and	Noted The amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of	

			article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
355.	Predica	5.	Yes and in any case, the possibility of any regulatory arbitrage should be avoided.	Noted
356.	PTK (Sweden)	5.	PTK agrees that the current definitions are insufficiently precise. PTK also notes with satisfaction point 5.3.20., which states that "it is possible that the lack of take-up is not due to failing of the Directive or Member States interpretations, but to other reasons such as a basic lack of demand". The complexities of national SLL and tax laws are among these reasons. PTK agrees with the new proposed definitions of "host member state" and "sponsoring undertaking" and would like to underline that, as also mentioned by EIOPA (5.5 EIOPA's advice), that IORPs, should respect the applicable social and labour law, irrespective of whether that is the law of the host Member State. In situations where the present definitions may lead to different interpretations, PTK calls for a flexible application of the rules and to keep in mind the purpose of stimulating mobility of workers and of facilitating cross-border IORP activity. PTK would warn against including the power for host state supervisors (or authorities of the Member State of the SLL) "to take measures against the IORP", as proposed by EIOPA in its final paragraph of chapter 5.5. (p.35). One of the prerequisites for a bigger internal market for occupational pensions is to have one supervisor for cross-border IORPs, which in our view should be the home state supervisor (except where SLL is concerned).	Noted Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

357.	Railways Pension Trustee Company Limited ("RPTCL	5.	We have not considered this question.	Noted
358.	Sacker & Partners LLP	5.	CfA 2: Definition of cross-border activity *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice*? The proposed amendment to Articles 6(c) and (j) would mean that many UK IORPs would be deemed to be cross-border, despite both the IORP and its members being located in the same Member State, simply because an entity in another Member State has a financial obligation to that IORP. These amendments are unnecessary and would have a negative impact for a number of reasons, including the ability of IORPs to improve the security of members' benefits through the use of parent company guarantees and on the competitiveness of companies from other Member States who wish to operate in the UK by way of a branch. We explain our reasoning in more detail below. Companies operating in the UK through a branch A number of companies operate in the UK by way of a branch, which has no separate legal identity. This practice is common amongst foreign banks which, for regulatory reasons, need their operations to be conducted by the same legal entity in every country. If the proposed changes were made, IORPs attached to such companies would become cross-border IORPs by virtue of having a sponsoring entity in a Host Member State, even though both the members and the IORP are in the Home Member State. By way of example: An Italian bank conducts its operations in the UK through a	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			branch. As the branch has no separate legal identity, the employees who live and work in the UK for that branch are technically employed by the Italian bank. Under the proposed amendments, the IORP would become a cross-border scheme because although the IORP and the members are located in the Home Member State, the sponsoring undertaking (i.e. the entity which is obliged to pay contributions) is located in a Host Member State. Consequently, companies that operate in the UK by way of a branch would be put at a competitive disadvantage compared with UK companies - because their UK IORPs would be subject to the more onerous requirements imposed on cross-border IORPs, whereas IORPs of their UK competitors would not be. This makes it less likely that such branches would offer pension provision to their employees. Taking the above example, the Italian bank operating in the UK and providing benefits in a UK IORPs to its UK employees would have its IORP categorised as cross-border and would be subject to more onerous requirements than a UK bank operating in the UK and providing benefits in a UK IORPS to its UK employees. IORPS with parent company guarantees Many UK pension schemes have parent company guarantees in place which are designed to take effect if another company defaults on its obligations to the IORP. Under the proposed amendments, if the company giving the guarantee is in a different Member State to the IORP and the members, giving such a guarantee would make the IORP a cross-border scheme as a result of the existence of the parent company's legally binding obligation to fund the pension scheme in the event that a funding shortfall arises. By way of example:	

			A UK company has established an IORP in the UK for its UK employees. The IORP's trustees have concerns about the financial status of the UK company and so the company's French parent company gives a guarantee that will take effect in the event that the UK company fails to make the necessary contributions. Under the proposed definitions, the IORP would be categorised as a cross-border scheme because it would effectively be a sponsoring undertaking in a Host Member State, despite the fact that both the members and the IORP are in the Home Member State. The effect of this is to create an artifical distinction between IORPs whose members are in the same Member State as the IORP, dependent upon whether or not a company in another Member State has a financial obligation to the IORP. Schemes which are categorised as cross-border are subject to more onerous funding requirements, which can have a significant financial impact on sponsoring undertakings. For some employers, it will no longer be financially viable for the company to continue operating the IORP. And the resulting withdrawal of pension provision will be detrimental to employees who rely on it to fund their retirement. A further likely result of the proposed changes is that overseas parent companies will no longer prepared to put in place financial guarantees for UK IORPs, on the basis that doing so would make the IORP cross-border and result in a heavier financial burden. This is clearly contrary to the aim of providing greater security for members' benefits. It may also have a detrimental impact on the UK's pension compensation scheme, the Pension Protection Fund, as a result of the lack of support from overseas parent companies in future.	

359.	Standard Life Plc	5.	We agree with the analysis of the options. If member states use different definitions of what cross-border activity is, this will create difficulties with the notification and approval processes for IORPs. We agree with the observation that it is possible that some of the lack of take-up may be attributed to lack of demand due to the differences in member states' overall legal and taxation systems, rather than due to failings of the current IORP Directive.	Noted
360.	TCO	5.	TCO agrees that the current definitions are insufficiently precise. TCO also notes with satisfaction point 5.3.20., which states that "it is possible that the lack of take-up is not due to failing of the Directive or Member States interpretations, but to other reasons such as a basic lack of demand". The complexities of national SLL and tax laws are among these reasons. TCO agrees with the new proposed definitions of "host member state" and "sponsoring undertaking" and would like to underline that, as also mentioned by EIOPA (5.5 EIOPA's advice), that IORPs, should respect the applicable social and labour law, irrespective of whether that tis the law of the host Member State. In situations where the present definitions may lead to different interpretations, TCO would call for a flexible application of the rules and to keep in mind the purpose of stimulating mobility of workers and of facilitating cross-border IORP activity. TCO would warn against including the power for host state supervisors (or authorities of the Member State of the SLL) "to take measures against the IORP", as proposed by EIOPA in its final paragraph of chapter 5.5. (p.35). One of the prerequisites for a bigger internal market for occupational pensions is to have one supervisor for cross-border IORPs, which in our view should be the home state supervisor (except where SLL is concerned).	Noted The amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

361.	Tesco PLC	5.	Definition of cross-border activity *Do stakeholders agree with the analysis of the options as laid out in this advice*? We believe that the EU should find out what the demand is for cross-border schemes before trying to find a solution through making legislative changes. The call for advice already recognises that lack of demand may be due to differences in members states' social and labour laws (including taxation) - which is the most likely reason for low take-up - and altering the definition of cross border activity does nothing to help with this. As noted above, we operate in six EU countries but have no intention to set up a cross-border scheme for exactly those reasons. On the basis that we expect it will have minimal impact and that the existing definition has already allowed 84 schemes to set up then we see little reason to change the definition.	Noted
362.	The Association of the Luxembourg Fund Industry (A	5.	The directive defines the Home member state as "the Member State, in which the institution has its registered office and its main administration or, if it does not have a registered office, its main administration" (Art. 6.i) The host member state is defined in Art 6.j as "the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members". In the case of "cross-border" activities a specific cross border application process must be respected in which Home and Host supervisor are sufficiently involved in (authorization and approval procedure). In consequence the host member state is	Noted

			the state where the IORP intends to carry out its activities for a sponsoring undertaking in form of a specific pension scheme. As the use of different definitions has led to a number of cases where Member States involved in cross border activities came to different conclusions, the Respondents agree on EIOPA's recommendation to give further clarification through amending the IORP directive and to reflect the position, that cross border activities arise when sponsor and IORP are located in two different member states. The Respondents agree that the decisive criterion for a cross border activity should be the different location of the sponsor and the IORP in two different member States. The Respondents share EIOPA's analysis with respect to the clarification of the host member states' definition. The new wording as proposed by EIOPA ensures that the ability to take measures against the IORP in case of breaches of SLL is limited to the newly defined host member state (i.e. the member state where the sponsoring undertaking is located). This is all the more relevant and effective if the social and labour law applicable to members of the scheme is the law of the host member state. The Respondents think that the proposed modification of article 6 (c) will ensure that the identity of the sponsoring undertaking will be clearly established. The combination of payment of the premium and the existence of a direct agreement with the institution or the member will give the employer the status of sponsoring undertaking (even if the member is not paid by the latter). The Respondents are in favour of option 2.	The amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

363.	THE SOCIETY OF PENSION CONSULTANTS	5.	As the draft response suggests at 5.3.5, amongst other things, tax differences between member states make it currently unlikely that cross border schemes will make more than the very limited progress, which they have so far made. We therefore see very limited practical value at present in changing the definition of cross border schemes and a negative impact, in that the changes could undermine the work which member States, including the United Kingdom, have undertaken to build workable regulatory structures around the current requirements. As a general principle, if there is to be a consistent EU-wide definition, in our view, the social and labour laws of the country, where a member is currently working, should provide the regulatory benchmark. However, the whole question is fundamental to the aim of facilitating the Internal Market through cross-border provision and should therefore be the subject of a separate and more detailed consultation. We are also aware that there are differences in interpretation as to what is an occupational pension scheme at all. Such differences in interpretation mean that amending the definition of cross-border activity will, in those cases, have no impact whatsoever. There will remain a fundamental and unsatisfactory impasse, whereby one country considers cross-border activity to be occurring – and hence the Home State IORP needing to comply with the Host State social and labour law, whereas the supervisory authorities in the Host State do not recognise the Home State IORP as an IORP and thus refusing to pass on any details of their social and labour law.	Noted
364.	Towers Watson	5.	We believe that the Commission's instructions as to the outcome	

	Deutschland GmbH		limit EIOPA's scope here. We agree with EIOPA's analysis of the impacts, including that the possible solution (paragraph 5.3.11) could make matters more complicated. Moreover, while allowing the authorities of a third country to take measures against an IORP might reassure third country members that their interests are being protected, given that those interests would constitute the designated social and labour law (SLL) of the Host Member State and the prudential regulations of the Home State (i.e. not their own 'third' country) it is unclear whether this would be anything more than a presentational benefit. We believe that the social welfare/member protection element of cross-border provision is equally important to the promotion of the free market and simplicity. Moreover, we believe that an appropriate definition of cross-border activity is linked to the issue of determining the scope of social and labour law and that both issues need much more analysis. One particular point, that needs greater consideration, is the proposed amendment to Article 6(c) – which we consider to be unclear. Specifically, it is not clear what a "direct agreement" means; a direct agreement to do what? In addition. EIOPA will have to clarify – possibly through a new definition – what it means by "support" of an IORP. These could have important ramifications. Take, for example, the situation where a French parent of a UK-based subsidiary provides that subsidiary with a 'parental guarantee' – this is quite common in order to ameliorate the assessment of the subsidiary's 'Pension Protection Fund' Levy; would this make the arrangement a cross-border plan – even though all members of the UK subsidiary's pension are UK-based? We work closely with those undertakings that are establishing (or have established) cross-border arrangements and we know that clarity in terms is important.	Agreed; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis; other comments have been noted, particularly the comment on the usefulness of the Budapest Protocol

			We note that EIOPA considers that 'disputes' between supervisory authorities – see 5.3.30 – can be settled via the Budapest Protocol. This is cited as reason for the Directive not to contain "detailed procedures to settle problems between the home and the host member states". However, this presumes that issues are purely 'supervisory' in nature. It seems possible that disputes will arise in the context of ☐ a more fundamental question as to whether or not cross-border activity is occurring ☐ whether or not a particular arrangement is subject to the Directive at all (e.g. is it actually an occupational – second pillar – pension?) or ☐ whether or not the issue arises under social and labour law. Given that these will be matters that are likely to be disputed between Member States (or at least conflict in the legal bases), the Budapest Protocol is unlikely to be of great use. We believe that EIOPA should consider – and propose a mechanism for resolution of inter-Member State conflict that does not fall under the Budapest Protocol.	
365.	Trades Union Congress (TUC)	5.	1. Definition of cross border activity *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice*? In relation to our earlier point about the lack of an impact assessment accompanying the consultation, we believe that EIOPA should press the Commission to provide detailed evidence to demonstrate the case as for why the IORP Directive needs reforming to facilitate cross-border pension schemes. At present there are only 84 cross-border IORPs of around 140,000 IORPs	Noted

			in the EU. The Commission and EIOPA have provided no detailed evidence demonstrating why the legislation should be amended. Our view is that the low number of cross-border schemes is not due to the wording of the Directive needing to be changed. Rather, it is due to lack of demand, and the different pension systems and tax regimes that exist in Member States.	
366.	UK Association of Pension Lawyers	5.	CfA 2 (Definition of cross-border activity): *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in the advice?* As a general matter, we very strongly disagree with the proposed extension of the definition of "sponsoring undertaking" that is made here – it would have a major impact in the UK. There are numerous IORPs in the UK that have been set up by employers based elsewhere in the EU for their UK-based employees (e.g. branch employees). These IORPs are not considered to be cross-border and nor should they be. Making them so would mean they were subject to the more onerous funding and investment rules applicable to cross-border schemes, and would create a real difficulty for a business to operate cross-border. Particular points of concern are as follows: (a) We consider that if the definition of "sponsoring undertaking" were to be extended, it would need to make clear that the branch in London of a French bank which has established a UK IORP (i.e. one where the UK is that IORP's home country as a usual UK occupational pension scheme under trust) for the benefit of the employees of the French bank working in its London branch is not engaging in cross-border activity. Note: The problem with the proposed definition is that, in legal terms, under English law, the French bank is the legal entity on	Noted; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			whom the obligation to contribute, under English law, would fall. In other words, the London branch of a French company, or a German company, or a Belgian company, is not a separate legal entity from the French, German or Belgian company as a matter of English law. (b) An EU company that has (or has acquired) a UK business with a UK IORP that is sponsored by the UK company that employs the members could also be treated as engaging in cross-border activity (and hence subject to the full funding requirement) if it has provided a guarantee in respect of the liabilities of the UK company to the IORP. This would penalise EU companies that have chosen (in a particular commercial and regulatory context) to act in a responsible manner to safeguard benefits under IORPs within their groups. This could have perverse effects in relation to the willingness of non-UK EU parent groups to provide guarantees in the future. It may also create a competitive disadvantage for EU companies investing in or operating UK businesses as compared with "pure" UK groups and non EU investors with UK businesses, which could amount to legislating to undermine competitivity (see part (3) of our general comments at the beginning of this document) and would also amount to a very material interference with existing rights (see part (2) of our general comments at the beginning of this at the beginning of this document). Similar considerations (of discincentive to groups to act responsibly and provide financial support) apply in other areas raised in the consultation – see our comments in response to questions 60 and 89 below. (c) The advice in section 5.5 does not highlight the difficulties of complying with the SLL from three different states and thus the negative impacts of this approach. The proposal to introduce a requirement to respect applicable SLL in addition to the home and host member state approach would increase the complexity	

			and uncertainty from this approach. (d) The analysis does not point out the risks associated with different interpretations of where a sponsoring undertaking may be "located" in the new "host member state" definition. The location may be defined in a number of different ways, such as the place of incorporation, the location of managers or the location of active business units and there is certainly a risk of uncertainty to be highlighted.	
367.	UNI Europa	5.	UNI Europa agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different Member States. In this respect clarity is also needed on what is covered by prudential regulations and social and labour legislation. UNI Europa would like to stress that the respect of social and labour law and the role of social partners in negotiating pension schemes is a crucial factor in the security and sustainability of pension schemes and systems. Likewise is compulsory membership and the existence of solidarity elements in pension schemes an integral part of a well functioning system. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law" of the host Member State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law. UNI Europa believes it is more appropriate to link the definition of Host Member State to the state in which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed.	Noted

			The requirement of full funding in case of cross-border activity is contradictory to the principles of a single market.	
368.	Universities Superannuation Scheme (USS),	5.	DEFINITION OF CROSS-BORDER ACTIVITY *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?* EIOPA's response should start by urging the EC to identify clear evidence of where the definition has obstructed cross-border pension provision. The response should also point out that the real barriers to cross-border pensions lie in tax and social security systems, not in pensions legislation. Furthermore, the low number of cross-border schemes does not reflect inadequate legislation; it reflects a lack of demand. Most occupational pension schemes have no ambition to provide pensions in other Member States. Furthermore, the additional funding requirements imposed on IORPs, that are defined benefit in nature, operating on a cross-border basis are unduly prohibitive. The EC should first conduct research to establish the potential number of cross-border schemes, based on the number of truly multi-national companies operating across the Internal Market. This work should recognise that many multi-nationals also operate beyond the borders of the EU.	Noted
369.	vbw – Vereinigung der Bayerischen Wirtschaft e. V.	5.	*Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice*? We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market	Noted

			plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market. 2. Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year. 3. From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable. As highlighted in the consultation document, the lack of cross-border activity of IORPs is also due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope	

			and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.	
370.	Verbond van Verzekeraars	5.	Yes, we agree with the analysis as laid out in the CfA. The definition of cross border activity should be non ambiguous in order to enhance cross-border activities. At this point, Member States have adopted different approaches when implementing the directive on identifying the cross border arrangements.	Noted
371.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this	Noted The amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis

			is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in Social and Labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change?	

			The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
372.	Whitbread Group PLC	5.	Whitbread urges EIOPA to request the EC to evidence how cross border pensions provision is affected by the definition and how many cross border scheme would result. Whitbread has European operations, but no intention of operating a cross border scheme because the tax system, social security system, and remuneration practices are very different across Europe and our pension provision in one jurisdiction would be inappropriate for other jurisdictions	Noted
373.	Zusatzversorgungskasse des Baugewerbes AG	5.	We refer to our answer on question 1.	
374.	Towers Watson	5.	6. CfA 2 Definition of cross border activity *Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice*? The EC's instruction as to outcome constrains EIOPA here. We agree EIOPA's analysis of the impacts, including that the possible solution (paragraph 5.3.11) could make matters more complicated. Moreover, while allowing the authorities of a third country to take measures against an IORP might reassure third country members that their interests are being protected, given that those interests would constitute the designated social and labour law (SLL) of the Host Member State and the prudential regulations of the Home State (i.e. not their own 'third' country) it is unclear whether this would be anything more than a	

			presentational benefit. We believe that the social welfare/member protection element of cross-border provision is equally important to the promotion of the free market and simplicity. Moreover, we believe that an appropriate definition of cross-border activity is linked to the issue of determining the scope of social and labour law and that both issues need much more analysis. One particular point, that needs greater consideration, is the proposed amendment to Article 6(c) – which we consider to be unclear. Specifically, it is not clear what a "direct agreement" means; a direct agreement to do what? In addition. EIOPA will have to clarify – possibly through a new definition – what it means by "support" of an IORP. These could have important ramifications. Take, for example, the situation where a French parent of a UK-based subsidiary provides that subsidiary with a 'parental guarantee' – this is quite common in order to ameliorate the assessment of the subsidiary's 'Pension Protection Fund' Levy; would this make the arrangement a cross-border plan – even though all members of the UK subsidiary's pension are UK-based? We work closely with those undertakings that are establishing (or have established) cross-border arrangements and we know that clarity in terms is important. See also response to question 6. We note that EIOPA considers that 'disputes' between supervisory authorities – see 5.3.30 – can be settled via the Budapest Protocol. This is cited as reason for the Directive not to contain "detailed procedures to settle problems between the home and the host member states". However, this presumes that issues are a purely 'supervisory' issue. It seems possible that disputes will arise in the context of	Agreed; the amended advice refrains from proposing a definition of sponsoring undertaking and suggests further analysis; other comments have been noted, particularly the comment on the usefulness of the Budapest Protocol

			☐ a more fundamental question as to whether or not cross-border activity is occurring ☐ whether or not a particular arrangement is subject to the Directive at all (eg is it actually an occupational – second pillar – pension?) or ☐ whether or not the issue arises under social and labour law. Given that these will be matters that are likely to be disputes between Member States (or at least conflict in the legal bases), the Budapest Protocol is unlikely to be of great use. We believe that EIOPA should consider – and propose a mechanism for resolution of inter-Member State conflict that does not fall under the vires of the Budapest Protocol.	
375.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	6.	In a fully harmonized regime, ring-fencing of the assets and/or liabilities relating to different Member States in a cross border context would be unnecessary. In the absence of full harmonisation, Article 16.3 of the Directive permits the home Member State to require ring fencing in order to deal with underfunding, and Article 18.7 permits host Member States to require ring fencing to ensure that investment rules of the host state are complied with in respect of the assets applicable to that state.	Noted; advice has been amended accordingly.

			EIOPA points out the difference between: 1. administrative ring fencing, which is primarily for the purpose of operating the IORP on an on-going basis i.e. for determination of contribution rates specific to each Member State, granting of indexation etc., and 2. patrimony protection rules which require a full legal separation of assets and liabilities so that in a stress situation e.g. winding-up, the assets of one section cannot be used to meet liabilities in a another section. The OPSG agrees that it is important that there is clarity around the type of ring-fencing which applies in each situation. The OPSG presumes that the "proposed principles of ring fencing" are the remarks contained in paragraphs 5 to 11 of the blue box. The OPSG is in agreement with these remarks and with the impacts of the options set out. The OPSG does not consider that ring-fencing should be obligatory in cases of cross border activity, and hence supports Option 1 with the home Member State having the power to decide if it must be applied. The OPSG supports the proposal for mandatory administrative ring fencing and patrimony protection measures in cases where additional investment rules are imposed by the host member State. The OPSG also supports the mandatory inclusion of privilege rules to protect the assets of an IORP on liquidation from other creditors i.e. Option 1	Advice has been clarified. Noted. Advice has been amended..
376.	AbA Arbeitsgemeinschaft für betriebliche Altersver	6.	The current wording of the IORP Directive lends the term "ring-fencing" different meanings in different contexts. We believe it is	Noted

			desirable to clarify the term in order to avoid misunderstanding. Unfortunately, the EIOPA advice does not clearly define the principles referred to in the question, therefore we assume that points 5-11 in the box under 6.5 are meant. In principle, we are of the opinion that ring-fencing should be avoided as far as possible. Ring-fencing can stand in the way of achieving efficiencies through scale economies and inter- as well as intra-generational risk sharing, which we see as core objectives of IORPs. Nevertheless, we acknowledge that ring-fencing may be necessary in order to be able to comply with social and labour law, in particular when it comes to the calculation and distribution of surplus funds/conditional indexation and the like. Whether administrative ring-fencing would be sufficient in these cases is not yet clear to us.	Advice has been clarified.
377.	ABVAKABO FNV	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
378.	AEIP	6.	35. Yes, the options respond on concerns of the call for advice. In the context of art. 16.3 AEIP agrees on Option 1. AEIP thinks that there should also exist a possibility for member states to prohibit ring fencing.	Noted
379.	AFPEN (France)	6.	Afpen agrees with EIOPA's position in order to clarify the scope of ring-fencing.	Noted
381.	AMICE	6.	For the mandatory separation of assets and management,	Noted

			AMICE recommends that reference be made to Art. 74 of Directive 2009/138/EC. Beyond this, we feel that additional work is necessary to better define "ring-fencing" in this context.	
382.	AMONIS OFP	6.	*What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*? AMONIS OFP agrees that it a clarification and a uniform definition of the concept and its scope of ring fencing is welcome. AMONIS OFP considers however that if ring-fencing will be obligatory, it should be limited to administrative ring fencing. ☐ Ring-fencing in the context of Article 16.3. of the Directive AMONIS OFP is in favour of option 1. According to Amonis, Member States should have the freedom to decide whether ring-fencing is mandatory in the event of cross-border activities or optional. AMONIS OFP is of the opinion that Member States should not be allowed to prohibit ring-fencing. ☐ Ring-fencing in the context of Article 18.7. of the Directive AMONIS OFP agrees with the analysis of EIOPA that in the framework of Article 18.7 administrative ring-fencing may have to be imposed, more in particular if the investment rules of the Host Member State are not compatible with the investment rules of the Home Member States. AMONIS OFP does not agree that Article 18.7. also requires patrimony protection rules. ☐ Ring-fencing in stress situations AMONIS OFP agrees with EIOPA that a stress situation should not be a trigger for ring-fencing.	Noted Advice has been amended.

			☐ Definition of ring-fencing AMONIS OFP agrees with the definitions proposed by EIOPA in the event of mandatory administrative ring-fencing and/or patrimony protection rules. AMONIS OFP is of the opinion that if the IORP opts for ring-fencing, in the event of optional ring-fencing, the administrative ring-fencing and/or patrimony protection rules should be defined in the same way in order to increase transparency.	
383.	ANIA – Association of Italian Insurers	6.	The ANIA agrees that there is a distinction between mandatory "ring fencing" in articles 3 and 4 of the current Directive and voluntary "ring fencing" in articles 16.3 and 18.7 of the current IORP Directive. Furthermore, the ANIA acknowledges EIOPA's adaptation of Article 74.6 of the Solvency II Framework Directive to IORPs and the ANIA fully supports the proposed administrative measures. But, since Article 74 concerns the fundamental separation of the management of life and non-life insurance activities, a strong reference to Article 74 in the IORP Directive might be confusing. In this regard, it should be highlighted that the concept of ring fencing for IORPs is not always comparable with the concept in the Solvency II Directive. Granting different rights to policy holders should be avoided as much as possible, because this reduces risk pooling and diversification. Moreover, granting different rights to policy holders could result in more burdensome administration. This is something that ANIA does not agree on. EIOPA notes that there is no need for implementing measures or level 3 measures in this area. The ANIA does not believe that such a possibility should be excluded in advance.	Noted; advice has been amended accordingly. Agreed; advice has been amended accordingly.

			Finally, the definition, the scope of measures and principles which warrant ring-fencing measures in the case of stress situations should be adopted as implementing measures as this will be the case in Solvency II as well. Therefore, the ANIA would also suggest redrafting paragraph 12 of EIOPA's advice as follows: "The Level 1 text should also include requirements inspired by article 74 of the Solvency II Directive while further detailed requirements will be included in level 2."	
384.	Association Française de la Gestion financière (AFG)	6.	There are many ways of ring fencing assets, depending on the design of the scheme. For instance, in a DC scheme, each employee account is a ring fenced system if there is only retirement savings on this account. In this case, there is no need for extra ring fencing. More constraints would create extra cost and would be unnecessary. What should be avoided are attempts to create additional hurdles to cross-border IORPs.	Noted; a section on DC schemes has been added.
385.	Association of British Insurers	6.	The ABI supports the broad concept of ring-fencing assets to improve protection of pension benefits and improve confidence in funded pension arrangements in general. We would welcome clarity on what is meant by ring-fencing and the impact on members; in particular what is means for cross-border members and non-cross-border members in the same scheme. Further, there are many ways to ring-fence assets in pension schemes and we would be concerned if attempts were made to determine these in detailed EU legislation.	Noted
386.	Association of Consulting Actuaries (UK)	6.	We believe that this is largely an appropriate response, subject to our comment on question 8 below. However, we note that	

			under item 7 dealing with administrative ring-fencing "in principle no allowance for transfer of assets" there needs to be allowance for the transfer of assets within an IORP from one section to another when an individual changes country of employment and wishes to transfer his assets and liabilities within the IORP (other situations can be envisaged). Also we note that the different interpretations of the concept of IORPs undertaking cross-border activity being fully funded at all times is not dealt with in any detail in the response and we would be keen to have EIOPA reflect on this discriminatory treatment of cross-border IORPs compared to single country IORPs (either here or elsewhere in the response).	Noted; advice has been amended.
387.	Assoprevidenza	6.	Yes, the option responds on concerns of CfA. In the context of art. 16.3 we agree on Option 1	Noted
388.	Assuralia	6.	CfA 3: RING FENCING The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	
389.	Belgian Association of Pension Institutions (BVPI-	6.	*What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*? BVPI-ABIP agrees that it a clarification and a uniform definition of the concept and its scope of ring fencing is welcome. BVPI-ABIP considers however that if ring-fencing will be obligatory, it should be limited to administrative ring fencing. ☐ Ring-fencing in het context of Article 16.3. of the Directive	Noted

			BVPI-ABIP is in favour of option 1. According to BVPI-ABPI Member States should have the freedom to decide whether ring-fencing is mandatory in the event of cross-border activities or optional. BVPI-ABIP is convinced that Member States should not be allowed to prohibit ring-fencing. ☐ Ring-fencing in the context of Article 18.7. of the Directive BVPI-ABIP agrees with the analysis of EIOPA that in the framework of Article 18.7 administrative ring-fencing may have to be imposed, more in particular if the investment rules of the Host Member State are not compatible with the investment rules of the Home Member States. BVPI-ABIP does not agree that Article 18.7. also requires patrimony protection rules. ☐ Ring-fencing in stress situations BVPI-ABIP agrees with EIOPA that a stress situation should not be a trigger for ring-fencing. ☐ Definition of ring-fencing BVPI-ABIP agrees with the definitions proposed by EIOPA in the event of mandatory administrative ring-fencing and/or patrimony protection rules. BVPI-ABIP is convinced that if the IORP opts for ring-fencing, in the event of optional ring-fencing, the administrative ring-fencing and/or patrimony protection rules should be defined in the same way in order to increase transparency.	
390.	BT Pension Scheme Management Ltd	6.	It seems to us that the concept of ring-fencing of assets in cross-border situations - especially where it is considered possible to strictly ring-fence in times of crisis - runs entirely contrary to the policy intent of encouraging cross-border	Noted

			pension provision. The aim of cross-border provision must be to reduce costs by generating larger pools of assets (we note that we do not regard IORPs as competitive entities, given that pension provisions are tied to employment, so the aim of boosting cross-border provision cannot be to increase cross-border competition); in such circumstances the value must be that there is a single pool of assets with no distinction between the members on the basis of nationality or place of employment. Thus suggesting that there might be a ring-fencing intrusion into this single pool, whether in times of crisis of otherwise, seems to us entirely wrong. We do not believe that ring-fencing in such circumstances should be possible.	
391.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	6.	BAVC prefers option 1 (=leaving it to Member States to decide to impose the application of ring-fencing measures).	Noted
392.	BVI Bundesverband Investment und Asset Management	6.	The concept of ring fencing, as EIOPA notes, is complicated and care needs to be taken that the impact of any directive does not create any uncertainty regarding the ability of IORPs to enter into standard market transactions.	Noted
393.	CEA	6.	The CEA agrees that there is a distinction between mandatory "ring fencing" in articles 3 and 4 of the current Directive and voluntary "ring fencing" in articles 16.3 and 18.7 of the current IORP Directive. Furthermore, the CEA acknowledges EIOPA's adaptation of Article 74.6 of the Solvency II Framework Directive to IORPs and the CEA fully supports the proposed administrative measures. But, since Article 74 concerns the fundamental separation of the management of life and non-life insurance activities, a strong reference to Article 74 in the IORP Directive might be confusing. In this regard, it should be highlighted that the concept of ring fencing for IORPs is not always comparable	Noted Noted; advice has been amended accordingly.

			with the concept in the Solvency II Directive. Granting different rights to policy holders should be avoided as much as possible, because this reduces risk pooling and diversification. Moreover, granting different rights to policy holders could result in more burdensome administration. This is something that CEA does not agree on. EIOPA notes that there is no need for implementing measures or level 3 measures in this area. The CEA does not believe that such a possibility should be excluded in advance. Finally, the definition, the scope of measures and principles which warrant ring-fencing measures in the case of stress situations should be adopted as implementing measures as this will be the case in Solvency II as well. Therefore, the CEA would also suggest redrafting paragraph 12 of EIOPA's advice as follows: "The Level 1 text should also include requirements inspired by article 74 of the Solvency II Directive while further detailed requirements will be included in level 2."	
394.	Chris Barnard	6.	I agree with the proposed principles of ring-fencing.	Noted
395.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
396.	De Unie (Vakorganisatie	6.	The principles laid out by EIOPA are according to us responding	Noted

	voor werk, inkomen en loop		to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	
397.	Derek Scott of D&L Scott	6.	There is no single "view", but rather a range of views.	Noted
398.	Direction Générale du Trésor, Ministère des financ	6.	We agree on the analysis referring to ring-fencing.	Noted
399.	Ecie vie	6.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
400.	European Federation for Retirement Provision (EFRP)	6.	NB the EFRP would prefer to speak about " safeguarding the interest of scheme members" or "the protection of pension benefits" instead of "consumer protection" when discussing occupational pensions (see 6.2.12., 6.2.13. and 6.2.14., for example). The EFRP prefers option 1, leaving it to Member States to decide to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ringfencing is a "subjective area" in its 2010 report. The EFRP finds that studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted. The EFRP believes that the Commission should not, at this moment, harmonise ring-fencing rules, and let Member States keep the power to prohibit ring-fencing where national rules already do so.	Agreed; advice amended Noted Noted; a section on DC

			The EFRP considers ring-fencing rules more important in mandatory systems than in voluntary systems. In member States where ring-fencing is mandatory, some of the measures proposed in paragraph 7 on page 54 could be introduced, subject to proportionality and not placing unreasonable demands on IORPs.	schemes has been added.
401.	European Fund and Asset Management Association (EFAMA)	6.	There are many ways of ring fencing assets, depending on the design of the scheme. For instance, in a DC scheme, each employee account is a ring fenced system if there is only retirement savings on this account. In this case, there is no need for extra ring fencing. More constraints would create extra cost and would be unnecessary. What should be avoided are attempts to create additional hurdles to cross-border IORPs. More generally, the concept of ring fencing, as EIOPA notes, is complicated and care needs to be taken that the impact of any directive does not create any uncertainty regarding the ability of IORPs to enter into standard market transactions, which could be overturned if creditor priorities were altered.	Noted; a section on DC schemes has been added.
402.	European Metalworkers Federation	6.	In our view, the principles laid out by EIOPA correspond to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that Member States should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system.	Noted
403.	European Mine, Chemical and Energy workers' Federation	6.	In our view, the principles laid out by EIOPA correspond to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of	

			the members and that Member States should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system.	
404.	Federation of the Dutch Pension Funds	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
405.	Financial Reporting Council	6.	We have not formed a view on the proposed principles.	
406.	FNV Bondgenoten	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
407.	Generali vie	6.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
408.	PMT-PME-MnServices	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially	Noted

			relevant for the Dutch situation.	
409.	IMA (Investment Management Association)	6.	For confidence to be built and maintained in funded pension arrangements, it is important to ensure a clear ring-fencing of assets, both between sponsor and pension fund, but also between providers and the underlying assets. However, there are many ways of ring-fencing assets in pension schemes and we would be concerned if attempts were made to determine these in detailed EU legislation. In particular, care needs to be taken not to create uncertainty regarding the ability of IORPs to enter into standard market transactions.	Noted
410.	ING Insurance	6.	We agree with option 1. Article 4 of the IORP directive states that if the insurer is covered by the directive all assets and liabilities corresponding to the occupational pension business shall be ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer. It is still unclear what ringfencing in this context means. Different countries have different opinions on ringfencing. The revised directive should set rules on ringfencing, but thereby use a light option as starting point. Ringfencing can not mean placing financial and legal barriers (Chinese walls) between the occupational pension business and other insurance business, but only separation of assets and accounting.	Noted
411.	Institute and Faculty of Actuaries (UK)	6.	Our comment on question 8 below outlines the additional points with regard to cross border IORPs we believe should be considered. We cannot think of any further issues that EIOPA should have considered at this stage. However, we note that under item 7 dealing with administrative ring-fencing "in principle no allowance for transfer of assets" the	Noted

			term 'transfer' is not defined. For example there needs to be allowance for the transfer of assets within an IORP from one section to another when an individual changes country of employment and wishes to transfer his assets and liabilities within the IORP (other situations can be envisaged). Also we note that the interaction of ringfencing options with the requirement that IORPs undertaking cross-border activity be fully funded at all times is not dealt with in sufficient clarity in the response and, in particular, whether fully funded is defined at the level of the IORP or at the level of each ringfenced (administratively or otherwise) section within the IORP and what this means for members' reliance on surpluses or deficits within the IORP and the potential 'transfer' of assets within the IORP. This is an area where some multinationals have expressed concerns as to the practicality and desirability of operating a cross border IORP as ringfencing may take away the liability pooling opportunity that cross border provision can provide. In particular, we note that EIOPA has identified that "there should be no advantage for cross-border members compared to local members" but equally EIOPA should be clear whether (with a harmonisation objective in mind) there should be no disadvantage for cross-border members compared to local members. This is a particular example of the question whether and to what extent a level playing field should exist between cross border and single country IORPs. This question should be addressed before consideration of possible harmonisation of the IORP Directive with Directives for financial products like insurance or banking.	Agreed; advice amended accordingly.
412.	Le cercle des épargnants	6.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted

413.	Macfarlanes LLP	6.	4. (CfA 3 Ring fencing) *What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*? 5. Ring-fencing could in principle provide a possible solution to various issues e.g.: ☐ allowing commercial pension provision (i.e. where the IORP operates in competition with an insurer) to be ring-fenced from any non-commercial activities. This would allow proportionate and targeted regulation of those activities for which regulation is justified without undue burdens being created for non-commercial activities which are not proper targets for further EU regulation. ☐ allowing different prudential standards to be enforced for cross-border activities without a disproportionate impact on domestic pension arrangements (in those jurisdictions where Pillar 2 is already developed) albeit that we note that this should be unnecessary if the original single passport concept is respected. ☐ allowing a distinction between new and existing commitments so that future pension provision could be built on any new prudential rules adopted without disruption to the prudential balance or value of existing commitments. 6. If ring-fencing is used to promote the expansion of provision and mobility it may be justified. However, care must be taken that ring-fencing is not used in such a way as to inhibit the development of cross-border schemes more generally. Generally, greater regulation and complexity will inhibit rather than encourage employers from adopting cross-border schemes and extending pension provision. 7. While in many cases we believe cross border schemes	Noted

			can and should be operated without ring-fencing, the latter could on occasions prove useful and should not be prohibited, but available to schemes on an optional basis. 8. We agree that there is a need for clarity for establishing situations that warrant the use of ring-fencing in stress situations. There might include arrangements that have a different origin (such as local and cross-border, insurance activities and non-insurance activities) and arrangements with different sponsors or guarantors or where a different party bears a risk (such as the distinction between defined contribution schemes with a guaranteed return and those defined contribution schemes with the benefit of a guarantee).	
414.	Mercer	6.	Although we agree that, in many circumstances, it is valuable to be able to identify different members' shares of a pooled investment fund, we do not agree that it is always necessary to ring fence assets and liabilities in all circumstances. For example, in defined contribution schemes it is absolutely necessary to be able to identify the assets underlying individual member's accounts and, if there are separate investment funds, these also need to be identifiable to be sure that they meet their mandates. It is also possible that, if some member states continue to prescribe additional investment restrictions on IORPs, then the assets underlying the liabilities of members based in that member state will need to be identified separately. However, circumstances are likely to arise where, if individual sections of a scheme are completely segregated from other sections, inefficiencies could arise that hinder, rather than enhance, the likelihood that members will get their expected benefits. For example: ☐ If sections are permitted to share administration costs, then the scheme will have easier access to benefits of scale;	Noted; a section on DC schemes has been added.

			☐ If defined benefit sections accrue surplus funds, then it could be legitimate for those funds to be shared across other sections of the scheme. We agree that this would need to be regulated, but provided the surplus cannot be explained solely by member contributions, we can see no detriment to members in making this possible. These circumstances are most likely to arise where all the sponsoring employers are members of the same group of companies, but we see no reason for limited sharing of assets to be prevented at the level of the Directive. In particular, they can be achieved without exposing members of one section to risks that could emerge due to the underfunding of another.	
415.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
416.	National Association of Pension Funds (NAPF)	6.	RING-FENCING *What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*? The NAPF agrees with the EC and EIOPA on the importance of ensuring a clear and robust legal separation between sponsoring undertakings and IORPs. However, this protection is already provided by Article 8 of the	Noted

			current IORP Directive. In the UK, this legislative requirement is robustly supported by the role of the Pensions Regulator, which would intervene if a sponsoring employer were to breach these clear requirements. The NAPF's view is that decisions on ring-fencing should continue to be left to Member States, subject to the high-level requirements of the current Article 8. The NAPF does not, therefore, consider that there is a case for adding to the current IORP Directive's requirements on ring-fencing in general. We do not see that an additional statement of general principles would strengthen protection in any practical way.	
417.	Pan-European Insurance Forum (PEIF)	6.	We prefer Option 1. However, this does not preclude specifying at EU level the types of ring-fencing. It would be useful to give EU-level guidance on what would be excessive ring-fencing. Ring-fencing needs to serve its purpose and be as light as possible. In view of this, it should be noted that the current Recital 38 of the IORP Directive is unclear and needs deleting (its wording is also mandatory – legally inappropriate for a recital). Ring-fencing rules set at EU-level should not preclude the possibility of cross-border solidarity where this is, for example, agreed by the social partners in a multinational company and is consistent with the relevant rules of all states concerned. Reflection should be given to the treatment of third country sections.	Noted
418.	Pensioenfonds Zorg en Welzijn (PFZW)	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the Call for Advice. We especially	Noted

			refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	
419.	PTK (Sweden)	6.	PTK prefers option 1, leaving it to Member states to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ringfencing is a "subjective area" in its 2010 report. In our opinion studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted. PTK believes that the Commission should not, at this moment, harmonise ring-fencing rules, and let Member States keep the power to prohibit ring-fencing where national rules already do so. PTK also considers ring-fencing rules more important in mandatory systems than in voluntary systems.	Noted A section on DC schemes has been added.
420.	Railways Pension Trustee Company Limited ("RPTCL	6.	We have not considered this question.	
421.	TCO	6.	TCO prefers option 1, leaving it to Member states to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ringfencing is a "subjective area" in its 2010 report. In our opinion studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted.	Noted

			TCO believes that the Commission should not, at this moment, harmonise ring-fencing rules, and let Member States keep the power to prohibit ring-fencing where national rules already do so. TCO also considers ring-fencing rules more important in mandatory systems than in voluntary systems.	
422.	The Association of the Luxembourg Fund Industry (A	6.	The Respondents agree with EFRP's comments on this question and would prefer to speak about " safeguarding the interest of scheme members" or "the protection of pension benefits" instead of "consumer protection" when discussing occupational pensions (see 6.2.12., 6.2.13. and 6.2.14., for example). The Respondents prefer option 1, leaving it to Member States to decide to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ring-fencing is a "subjective area" in its 2010 report. The Respondents find that studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted. The Respondents consider ring-fencing rules more important in mandatory systems than in voluntary systems.	Agreed; advice amended. Noted; a section on DC schemes has been added.
423.	THE SOCIETY OF PENSION CONSULTANTS	6.	We agree that the principles should be included in Level 1 text and hence should be subject to full scrutiny by the legislative process – within both the European Parliament and the Council of Ministers. Moreover, they should then be assessed under a full Quantified Impact Study. In general we consider that it would be appropriate to allow	Noted

			Member States to impose ring fencing measures rather than requiring them to do so. This seems more in line with the notion of the application of intelligent 'risk-based' supervision, with supervisors being able to decide whether action is needed.	
424.	Towers Watson Deutschland GmbH	6.	In general we believe that the provisions in the existing Directive are adequate to allow Member States to impose ring fencing measures if needed. This seems more in line with the notion of the application of 'risk-based' supervision, with supervisors being able to decide whether action is required.	Noted
425.	Transport for London / TfL Pension Fund	6.	We agree on the need for there to be a clear legal separation between the IORP and sponsor. In the UK legislation and the Pensions Regulator already provides for this. Further protection is already provided through Article 8 of the current IORP.	Noted
426.	UK Association of Pension Lawyers	6.	CfA 3 (Ring-fencing): *What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*? Our response to this question will be divided into four parts: ☐ (A) – some preliminary comments on this issue; ☐ (B) – our comments on the extent to which the principles respond to the concerns expressed in the CfA; ☐ (C) – our comments on the proposed principles in respect of cross-border activity; and ☐ (D) – our comments on the proposed principles in respect of stress situations. (A) – Preliminary comments Our view is that the aim of protection of pension benefits must be linked to expansion of provision and mobility. Otherwise it is merely about legislating for jurisdictions which have existing	Agreed that privilege rules should neither be mandatory or prohibited; advice amended accordingly; other comments noted.

			provision for protection of benefits, which would not be justified by Treaty aims and would be contrary to the principle of subsidiarity. Ring-fencing has a role in ensuring new regulation designed to create a level playing field and develop or enhance a market in provision of retirement benefits does not have a disproportionate impact on existing arrangements and create unwarranted interference with local prudential regulation of existing arrangements or social and labour law and with the rights and obligations and financial burdens of employers who have established pension arrangements in a different regulatory environment. It is appropriate for ring-fencing to operate between arrangements which are subject to different regulatory regimes. This is the approach taken under the existing IORP Directive in Article 3 (ring-fencing compulsory pension arrangements which are considered to be social security schemes from non-compulsory occupational retirement business), Article 4 and Article 7 (ring-fencing occupational retirement provision business of insurance undertakings from other insurance activities), Article 8 (legal separation between sponsoring entity and institution for occupational retirement provision) and Articles 16, 18 and 21 (option for to impose requirement for ring-fencing of assets and liabilities related to cross-border activity). There is tension in the legislative intent between: ■ "what is appropriate ring-fencing in the context of cross-border activity" ■ "general principles which warrant ring-fencing measures in the case of stress situations" and	

			■ "which would improve adequate protection of pension benefits". The matters that warrant ring-fencing may be: ■ different regulatory regimes (as above); ■ different sponsor; ■ different benefit terms applicable pursuant to employment contract or applicable social and labour law; ■ different protections under social and labour law; and ■ local prudential requirements or pension protection schemes. We are not clear that of itself protection of pension benefits as a general aim (rather than protection of particular pension benefits) is a reason for imposing any levels of ring-fencing. In particular, as a statistical fact, cross-subsidy or "solidarity", to use EIOPA's term, improves the protection of pension benefits for the generality even though it weakens protection for particular groups. The issue is when is it right to allow or to require pension benefits to be protected by ring-fencing. We do not think that the general benefit from "solidarity" can be reason enough to legislate to require removal of ring-fencing for acquired protection of workers who currently benefit from ring-fencing or priorities. Where ring-fencing is appropriate, we think only "patrimony protection rules" applicable either upfront or when the stress situation arises are effective and administrative ring-fencing measures are necessary to enable patrimony protection rules to be put in place in stress situations. Where ring-fencing is to be imposed on a mandatory basis,	

			there should be good reason if it removes current levels of "solidarity" protecting acquired rights of individuals or sponsors. There should be no high barriers to permitting ring-fencing on a voluntary basis at the option of sponsors, IORPs or member states, since ring-fencing (and other protections such as priorities) defines the financial risks which such parties are willing to accept and the level of protection of pension benefits which they should be able to agree to the same extent they are able to agree the level of such benefits. (B) – Are the principles responding to the concerns expressed in the CfA? This is not clear. The concerns expressed in the CfA itself are not clear. As noted in our preliminary comments on this question above, there is tension in the legislative intent between: ■ "what is appropriate ring-fencing in the context of cross-border activity"; ■ "general principles which warrant ring-fencing measures in the case of stress situations"; and ■ "which would improve adequate protection of pension benefits". The aims of the legislation appear to cover competing objectives: ■ protecting pension benefits; ■ expanding pension provision; ■ removing barriers to competition between IORPs in different jurisdictions and between IORPs and insurance companies.	

			The objective of increasing protection for existing pension rights needs to be justified as it would have the effect of increasing financial burdens on existing IORPs and sponsors of IORPs. This would have a disproportionate impact on businesses in some parts of the European Union and could be seen as legislating to undermine competitivity in those jurisdictions (see parts (3) and (4) of our general comments at the beginning of this document). Furthermore, any intervention with existing or acquired rights or private parties requires strong justification. That justification may exist at national levels but not at European Union level. The objective of creating a level playing field or increased competition between IORPs and insurance companies or expanding pension provision will not be served by such increase in protections. The aim of removing barriers to competition between IORPs in different jurisdictions and between IORPs and insurance companies may justify legislating in areas where IORPs and insurance companies already compete. It cannot justify legislating for IORPs that are restricted in their activities and do not operate commercially. It also cannot justify legislating for defined benefit IORPs if there is no clear evidence that insurance companies can and wish to compete for such business. Having regard to the above, we think an appropriate objective for ring-fencing legislation is to enable a legal framework to be developed for cross-border IORPs or certain types of IORPs without interference with existing rights of members, sponsors and others or with the operation of existing IORPs. We think with this objective in mind the principles would be appropriate. (C) – The scope of ring-fencing measures needs to be clarified in the context of cross-border activity by IORPs In considering ring fencing measures for cross border activity,	

			as a general comment it is important to balance the concerns of the protection of benefits with the other purposes of the IORP Directive, particularly that of allowing and facilitating the provision of cross border IORPs. As noted in section 5, the incidence of cross border IORPs is low and, in fact, appears to have reduced since the introduction of the directive. A IORP which is ring-fenced as between the portion in each Member State in which it operates loses many of the advantages that it might otherwise gain in terms of ease of administration and the value of economies of scale and diversification of risk from a shared investment pool. In those circumstances, ring-fencing will make the cross border IORP significantly less attractive for the sponsoring undertaking compared with operating different IORPs in each jurisdiction, and is likely to result in a further reduction in the number of cross border IORPs in operation. In cross border ring fencing, this particular concern needs to be balanced against the need to provide protection. Our specific comments on the proposed principles are as follows: 1. We broadly agree that the aim of Articles 16.3 and 18.7 is the same, i.e. facilitating compliance and protection of rights of members and beneficiaries, but the scope of each is different. Article 16.3 appears aimed at ensuring full solvency for cross border without requiring full solvency for local activities, and Article 18.7 is directed at investments and ratios of assets of particular categories that may be held by an IORP. However, even if the aim and scope is not identical, it may be difficult to operate ring-fencing for each matter differently within any one IORP. 2. Option 1 is preferred. 3. We agree.	

			4. We agree. (D) – The text of an article to be inserted into the Directive with the aim of establishing the general principles which warrant ring-fencing measures in the case of stress situations including the legal implications and common safeguards, which would improve adequate protection of pension benefits In relation to stress situations, the need for ring fencing is of more relevance. Within the UK, the IORPs are held separately from other businesses and as such the requirements should be complied with without difficulty. So long as the concept of a stress situation is closely defined and relating to a genuine risk of loss to the IORP from insolvency or similar, as a general matter we believe that this is an appropriate response. Our specific comments on the proposed principles are as follows: 5. We agree. 6. If stress situations are identified as situations in which benefits may be reduced on the liquidation of the IORP or part of the IORP, we agree that any ring-fencing needs to be effective in such situations. We would also think that such stress situations may be triggers for shifting from administrative ring-fencing to patrimony protection but that they should not necessarily be triggers for ring-fencing that had not previously existed. However, if under existing arrangements stress situations are triggers for ring-fencing we would think it inappropriate to interfere with such arrangements. Therefore we would recommend that legislation should not prohibit stress situations being triggers for ring-fencing (subject to the conditions set out at 3.).	

			7. We agree except in respect of transfers. The prohibition on transfers between IORPs and indeed between IORPs and insurance companies may be anti-competitive. Transfers should be permitted with the consent of the members or beneficiaries. However, transfers must not be permitted in stress situations to the extent that they affect the value of any members' or beneficiaries' rights and the level of protection without the consent of such members and beneficiaries. 8. We would suggest it may be inappropriate for the IORP to determine the aim and functioning of ring-fencing in relation to employer sponsored IORPs that have no independent business. Instead, the sponsor may determine the aim and functioning of ring-fencing either alone or with the IORP. Existing rights to trigger ring-fencing should not be varied by legislation without good reason. 9. We are not sure of the reasoning in suggesting that supervisory authorities should have the power to impose ring-fencing measures in situations where the IORP and/or sponsor do not determine to use ring-fencing and where ring-fencing is not mandatory under either the directive or legislation in the host or home Member States. As ring-fencing benefits some members and beneficiaries and disadvantages others (loss of "solidarity"), such powers would be an intervention in the rights of such members and beneficiaries by an independent body without legislative authority. This may be contrary to the ECHR. 10. We broadly agree. However, we would recommend that the restrictions on transfers under Article 4 and as proposed for Article 16.3 and 18.7 be relaxed to allow transfers either with the consent of affected members and beneficiaries or on terms which do not materially affect the protection of their benefits or as may be permitted by Member States where ring-fencing is	

			not mandatory. 11. We agree. 12. We agree. 13. We agree that Member States should have the option to determine privilege rules. Privilege rules as suggested which put members ahead of employees of the IORP and tax authorities and perhaps creditors and service providers to the IORP risk making it expensive or difficult for IORPs to operate in jurisdictions with such privilege rules. These rules could have significant impact on protection in stress situations and on the development of IORPs and would undermine the "level playing field" objective. We think this is not reason enough to prohibit privilege rules or to impose them where none currently apply because such privilege rules might hamper the development of pension provision in IORPs and prohibiting them would be an inappropriate interference in the private rights of members, beneficiaries and other creditors of the IORPs not justified by the objectives of the directive. 14. We agree.	
427.	UNI Europa	6.	In our view, the principles laid out by EIOPA correspond to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that Member States should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system.	Noted
428.	Universities Superannuation Scheme (USS),	6.	RING-FENCING *What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA*?	Noted

			USS agrees with the EC and EIOPA on the importance of ensuring a clear and robust legal separation between sponsoring undertakings and IORPs. However, this protection is already provided by Article 8 of the current IORP Directive. In the UK, this legislative requirement is robustly supported by the role of the Pensions Regulator, which would intervene if a sponsoring employer were to breach these clear requirements. USS's view is that decisions on ring-fencing should continue to be left to Member States, subject to the high-level requirements of the current Article 8. USS does not, therefore, consider that there is a case for adding to the current IORP Directive's requirements on ring-fencing in general. We do not see that an additional statement of general principles would strengthen protection in any practical way.	
429.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	Noted
430.	Whitbread Group PLC	6.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
431.	Zusatzversorgungskasse des Baugewerbes AG	6.	8. We agree on Option 1.	Noted

432.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	7.	See question 6	
433.	AbA Arbeitsgemeinschaft für betriebliche Altersver	7.	Whilst we agree in general with the analysis of the positive and negative impacts of ring-fencing, we would highlight that there is too high a focus on member/beneficiary protection and not enough on the objective of facilitating efficient management of IORPs. In a system where beneficiaries are protected by social and labour law, the security level of the IORP is secondary to the objective of facilitating efficient management.	Noted
434.	ABVAKABO FNV	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
435.	AEIP	7.	Ring fencing might have a positive impact: with homogenious criteria there will be a more homegenious protection, what seems fundamental in the case of a cross border activity. But there are major negtive impacts: more administrative tasks and thus possibile increase of costs, and no possibility for an employer to really act on European level by offset surplusses and deficits of different schemes. This last point can however lead to arbitration of opportunities by compensating intenal shortage with assets of another country.	Noted
436.	AFPEN (France)	7.	The notion of compartment (ring-fencing) is a little indistinct because it recovers purely administrative operations and also a legal organization which separates the operations and the assets concerned. AFPEN wants to point that the wished protection by an administrative ring-fencing is unrealistic in case of underfunding of the pension scheme. Only a legal ring-fencing is able to bring a real guarantee.	Noted
438.	AMONIS OFP	7.	*How to stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing*?	Noted

			AMONIS OFP agrees with EIOPA's analysis of the positive and negative impacts of ring-fencing in the different situations. AMONIS OFP wishes to stress the administrative complexity and thus increased costs that ring-fencing may bring about. That is the main reason why it would prefer ring-fencing to remain optional in the Directive.	
439.	ANIA – Association of Italian Insurers	7.	In general terms, the ANIA agrees on the positive and negative impacts of the introduction of the proposed principles. We would particularly stress the negative impact of granting policy holders different rights to the assets. However, it should be made very clear that there will not be any discrimination between Members based on their location. Finally, there should be a possibility –in exceptional cases- to make transfers between ring fenced funds if agreed by the Supervisors as in article 74.7 of the Solvency II Directive.	Noted
440.	Association of British Insurers	7.	The ABI has no further comments to make beyond our response to Question 6.	
441.	Assoprevidenza	7.	Ring fencing might have a positive impact: clear and homogenous criteria, so better and homogenous protection, fundamental in the case of cross border activity, but theremight be also negtive impact: more administrative tasks and thus possibile increase of costs and no possibility for an employer to really act on European level by offset surplusses and deficits of different schemes. This last point can however lead to arbitration of opportunities by compensating intenal shortage with assets of another country.	Noted
442.	Assuralia	7.	The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to	

			prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	
443.	Belgian Association of Pension Institutions (BVPI-	7.	How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing? BVPI-ABIP agrees with EIOPA's analysis of the positive and negative impacts of ring-fencing in the different situations. BVPI-ABIP wishes to stress the administrative complexity and thus increased costs that ring-fencing may bring about. That is the main reason why it would prefer ring-fencing to remain optional in the Directive.	Noted
444.	BT Pension Scheme Management Ltd	7.	As discussed above in response to Question 6, we do not think that ring-fencing should be pursued as it runs contrary to the policy aim of encouraging cross-border pension provision.	Noted
445.	CEA	7.	In general terms, the CEA agrees on the positive and negative impacts of the introduction of the proposed principles. We would particularly stress the negative impact of granting policy holders different rights to the assets. However, it should be made very clear that there will not be any discrimination between Members based on their location. Finally, there should be a possibility –in exceptional cases- to make transfers between ring fenced funds if agreed by the Supervisors as in article 74.7 of the Solvency II Directive.	Noted
446.	Chris Barnard	7.	The positive impacts of ring-fencing outweigh the negative impacts. Ring-fencing may cause the SCR to increase due to	Noted

			reduced risk diversification, but this is offset by the appropriately greater protection afforded to members and beneficiaries in many cases. Given that occupational pensions can be considered as deferred income, and are effectively Noted earned as they accrue, I would argue that this protection is more important than any reduction in risk diversification.	
447.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
448.	De Unie (Vakorganisatie voor werk, inkomen en loop	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
449.	Derek Scott of D&L Scott	7.	There seems to be an error in this question (at least in the English translation). Should "to" be "do"?	
450.	Ecie vie	7.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
451.	European Federation for Retirement Provision (EFRP	7.	The EFRP wants to avoid an "overkill" of ring-fencing as this would lead to a loss of economies of scale that could be achieved and to increased administrative costs for IORPs. It would also call on EIOPA and the EC to respect Member State regulations in this area. A fair balance must therefore be struck between protecting benefits on the one hand and the need for IORPs to function effectively, including in stress situations, on the other.	Noted
452.	Federation of the Dutch Pension Funds	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
453.	Financial Reporting Council	7.	We have not considered this question.	
454.	FNV Bondgenoten	7.	Since for the Dutch situation we are in favour of Option 1, we	Noted

			refrain from judging the principles.	
455.	Generali vie	7.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
456.	PMT-PME-MnServices	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
457.	Hungarian Financial Supervisory Authority (HFSA)	7.	7.	
458.	Institute and Faculty of Actuaries (UK)	7.	No response	
459.	Le cercle des épargnants	7.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
460.	Macfarlanes LLP	7.	9. (CfA 3 Ring fencing) How to stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing? 10. The proposed principles will be positive if they are used for proportionate regulation, such as if a new prudential framework were to be established for future pension provision without undue interference with existing legal rights and obligations, but not if they are used in such a way so as to discourage cross border provision entirely. The proposed principles respect the various local investment rules, benefit policies and social security arrangements in different host Member States.	Noted
461.	Mercer	7.	As discussed in our answer to question 6, we consider there could be more negative outcomes if ring fencing is imposed in too restrictive a way than included in the consultation document.	Noted

462.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
463.	National Association of Pension Funds (NAPF)	7.	*How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing?* 1. The NAPF agrees with the EC and EIOPA on the importance of ensuring a clear and robust legal separation between sponsoring undertakings and IORPs. 3. However, this protection is already provided by Article 8 of the current IORP Directive. In the UK, this legislative requirement is robustly supported by the role of the Pensions Regulator, which would intervene if a sponsoring employer were to breach these clear requirements. The NAPF's view is that decisions on ring-fencing should continue to be left to Mmember States, subject to the high-level requirements of the current Article 8. 5. The NAPF does not, therefore, consider that there is a case for adding to the current IORP Directive's requirements on ring-fencing in general. We do not see that an additional statement of general principles would strengthen protection in any practical way.	Noted
464.	Pensioenfonds Zorg en Welzijn (PFZW)	7.	Given the Dutch situation, we are in favour of Option 1. We refrain from judging the principles.	Noted
465.	PTK (Sweden)	7.	.An excessive use of ring-fencing would lead to a loss in achievement of economies of scale and to increased administrative costs for IORPs. PTK would therefore call on	Noted

			EIOPA to respect Member State regulations in this area. There has to be a fair balance between protecting benefits and the need for IORPs to function effectively also in stress situations.	
466.	Railways Pension Trustee Company Limited ("RPTCL	7.	We have not considered this question.	
467.	TCO	7.	.An excessive use of ring-fencing would lead to a loss in achievement of economies of scale and to increased administrative costs for IORPs. TCO would therefore call on EIOPA to respect Member State regulations in this area. There has to be a fair balance between protecting benefits and the need for IORPs to function effectively also in stress situations.	Noted
468.	The Association of the Luxembourg Fund Industry (A	7.	The Respondents agree with EFRP and want to avoid an "overkill" of ring-fencing as this would lead to a loss of economies of scale that could be achieved and to increased administrative costs for IORPs. It would also call on EIOPA and the Commission to respect Member State regulations in this area. A fair balance must therefore be struck between protecting benefits on the one hand and the need for IORPs to function effectively, including in stress situations, on the other.	Noted
469.	THE SOCIETY OF PENSION CONSULTANTS	7.	We consider that more time is needed to accurately assess the impacts. Whilst we have no reason to consider EIOPA's assessment flawed, we are very much aware that this matter would merit further reflection.	Noted
470.	Towers Watson Deutschland GmbH	7.	To date there is no evidence that the existing arrangements are inadequate. As we have been for some three years going through a period of unprecedented economic uncertainty and	Noted

			'stress', it might be thought that if this were ever to arise as an issue it would have arisen by now.	
471.	Transport for London / TfL Pension Fund	7.	As stated in our Answer 6, we agree on the need for there to be a clear legal separation between the IORP and sponsor. In the UK legislation and the Pensions Regulator already provides for this. Further protection is already provided through Article 8 of the current IORP.	Noted
472.	UK Association of Pension Lawyers	7.	CfA 3 (Ring-fencing): How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing? The impact assessment fails to point out the negative effects of ring-fencing, in terms of its reduction in the effectiveness of a cross border IORPs as described in our response to question 6 above. The associated administrative costs in most cases will incentivise employers simply to operate the separate IORPs in different jurisdictions, defeating the purpose of a cross border arrangement. This is an issue for the IORP and sponsoring undertaking but also, we would argue, for the member, which loses the advantage of a business-wide IORP. As noted in our response to question 6 above (paragraph 9), the imposition of ring-fencing can benefit some members and beneficiaries and disadvantage others. Any interference with existing rights is negative. It may benefit some members or beneficiaries but only to the detriment of others. If ring-fencing principles were to be introduced in relation to new IORPs or new cross-border or other activities of an IORP without impacting existing rights, they should provide clarity on the level of protection for members and beneficiaries in stress situations and should enable higher (or lower) levels of protection in new arrangements.	Noted

473.	Universities Superannuation Scheme (USS),	7.	How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing? 1.	
474.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	7.	Since for the Dutch situation we are in favour of Option 1, we refrain from judging the principles.	Noted
475.	Whitbread Group PLC	7.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
476.	Zusatzversorgungskasse des Baugewerbes AG	7.	9. Because there are positive (protection) as well as negative effects (costs and administrative handling) of ring fencing and the definiton and terms are not quite clear, ring fencing should play a role during the impact assessments.	Noted
477.	Towers Watson	7.	8. *How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing*? Please see our response to question 6. To date there is no evidence that the existing arrangements are inadequate. As we have been for some three years going through a period of unprecedented economic uncertainty and 'stress', it might be thought that if this were ever to arise as an issue it would have arisen by now.	Noted
478.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	8.	See question 6	
479.	AbA Arbeitsgemeinschaft für betriebliche Altersver	8.	Firstly, EIOPA does not make clear which type of ring-fencing is meant in the proposals, administrative or patrimony? Assuming	Noted; the advice has been clarified.

			this will be defined in each case, our views on the various policy options are as follows: With respect to Article 16.3, we agree with Option 1, i.e. to allow the Member States to decide if and when ring-fencing must be applied in case of cross-border activity. With respect to Article 18.7 we do not agree with the EIOPA proposal. We would want the Member State to have the option to impose ring-fencing. With respect to ring-fencing measures in stress situations we agree with Option 2. Member States should have the option to introduce privilege rules in the national legal framework. No, as is currently the case under Article 18, the Member State should not be obliged to introduce such rules.	
480.	ABVAKABO FNV	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
481.	AEIP	8.	36. AEIP thinks that it should be up to member states to prohibit or not the ring fencing. Some member states might want to maintain investment rules as a prevention against imnprudent investment decisions besides a principle based pension protection regime.	Noted
482.	AFPEN (France)	8.	AFPEN agrees with EIOPA's position to make ring-fencing obligatory in case of cross-border activity.	Noted
484.	AMONIS OFP	8.	*What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible*? Ring-fencing should only be mandatory in the cases where the	Noted

			investment rules are not compatible. Even in that situation, AMONIS OFP is of the opinion that it suffices to impose administrative ring-fencing. Patrimony protection rules should remain optional. In all other situations, ring-fencing should remain optional.	
485.	ANIA – Association of Italian Insurers	8.	The ANIA believes that ring fencing should be avoided as much as possible as ring fencing could lead to less risk spreading. Indeed, more ring fencing would lead to less risk diversification and due to the increase of administrative task could lead to less cross-border activity. Therefore Member States should not be obliged to introduce ring fencing rules for all cross-border activity. However, the ANIA acknowledges that in certain cases, ring fencing is needed to split specific risks in Members' interest. In case investment rules are not compatible ring fencing of assets could be needed. But the ANIA position is that investment rules should be compatible, see Q48.	Noted
486.	AON HEWITT	8.	We are not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the host country.	Noted
487.	Association of British Insurers	8.	The ABI has no further comments to make beyond our response to Question 6.	
488.	Association of Consulting Actuaries (UK)	8.	We would be strongly against any such mandatory ring-fencing approach since it would negate many of the advantages of	Noted

			cross-border activity for multinational employers and consequently impact their employees.	
489.	Association of French Insurers (FFSA)	8.	The FFSA believes that ring fencing should be avoided as much as possible as it could lead to less risk spreading. However in particular cases and to safeguard the interests of scheme members and to ensure compliance with Host Member State rules in case of cross border activity, one ring fenced fund for all cross border activities could be sought.	Noted
490.	Assoprevidenza	8.	It should be up to Member States to prohibit or not ring fencing.	Noted
491.	Assuralia	8.	The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	
492.	Belgian Association of Pension Institutions (BVPI-	8.	What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible? Ring-fencing should only be mandatory in the cases where the investment rules are not compatible. Even in that situation, BVPI-ABIP is concinced that it imposing administrative ring-fencing is enough. Patrimony protection rules should remain optional. In all other situations, ring-fencing should remain optional.	Noted
493.	BNP Paribas Cardif	8.	BNP Paribas Cardif believes that ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted

			However in particular cases and to safeguard the interests of scheme members and to ensure compliance with Host Member State rules in case of cross border activity, one ring fenced fund for all cross border activities could be sought.	
494.	Bosch Pensionsfonds AG	8.	We are not in favour of making ring fencing mandatory in the case of cross-border activity.	Noted
495.	Bosch-Group	8.	We are not in favour of making ring fencing mandatory in the case of cross-border activity.	Noted
496.	BT Pension Scheme Management Ltd	8.	As discussed above in response to Question 6, we do not think that ring-fencing should be pursued as it runs contrary to the policy aim of encouraging cross-border pension provision.	Noted
497.	CEA	8.	The CEA believes that ring fencing should be avoided as much as possible as ring fencing could lead to less risk spreading. Indeed, more ring fencing would lead to less risk diversification and due to the increase of administrative task could lead to less cross-border activity. Therefore Member States should not be obliged to introduce ring fencing rules for all cross-border activity. However, the CEA acknowledges that in certain cases, ring fencing is needed to split specific risks in Members' interest. In case investment rules are not compatible ring fencing of assets could be needed. But the CEA position is that investment rules should be compatible, see Q48.	Noted
498.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted

499.	De Unie (Vakorganisatie voor werk, inkomen en loop	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
500.	Derek Scott of D&L Scott	8.	See 6. above.	
501.	Direction Générale du Trésor, Ministère des financ	8.	Yes, we think it is of high importance ring-fencing being compulsory in case of cross-border activity. These ring-fencing arrangments should be strict and established at the very beginning of the cross-border activity.	Noted
502.	Ecie vie	8.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
503.	European Federation for Retirement Provision (EFRP)	8.	The EFRP is not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the Host State.	Noted
504.	Federation of the Dutch Pension Funds	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
505.	Financial Reporting Council	8.	We have not considered this question.	
506.	FNMF – Fédération Nationale de la Mutualité Française	8.	FNMF fully supports obligations of strict administrative and patrimony ring-fencing in case of cross–border activity (option 2 of point 6.5). This principle is a mandatory one to ensure a level playing field between host member state and local member state.	Noted
507.	FNV Bondgenoten	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in	Noted

			cross-border situations.	
508.	Generali vie	8.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
509.	Groupement Français des Bancassureurs	8.	FBIA believes that ring fencing should be avoided as much as possible as it could lead to less risk spreading. However in particular cases and to safeguard the interests of scheme members and to ensure compliance with Host Member State rules in case of cross border activity, one ring fenced fund for all cross border activities could be sought.	Noted
510.	PMT-PME-MnServices	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
511.	Institute and Faculty of Actuaries (UK)	8.	Mandatory ringfencing in cross border plans (either of assets or liabilities under article 16.3, or of assets under article 18.7) would act against the Internal Market's harmonisation objective since it would negate many of the perceived advantages of cross-border activity for multinational employers, such as pooling of assets and liabilities, and consequently impact their employees.	Noted
512.	Le cercle des épargnants	8.	Ring fencing should be avoided as much as possible as it could lead to less risk spreading.	Noted
513.	Macfarlanes LLP	8.	(CfA 3 Ring fencing) What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible? We are not in support of making ring-fencing obligatory in the case of cross-border activity. Ring-fencing would make cross border schemes more costly and less efficient, because there	Noted

			would be little practical difference from operating separate IORPs. The greater efficiency in the method of provision, the greater the resources available for pension provision.	
514.	Mercer	8.	The introduction of additional requirements attaching solely to cross border IORPs should be proportional, to avoid acting as a disincentive to establishing cross border arrangements. The principle should be that national (home member state) legislation on ring fencing should already be appropriate to cross border IORPs as far as possible (except to deal with cases where different member states are permitted to introduce additional regulation under the IORP as is the case for investments). So, in our view, the member state of the home country should only have to introduce ring fencing in cases of cross border activity (over and above national rules on ring fencing) in cases where the host member state has imposed investment rules that are in line with the IORP Directive (Article 18(7)) but not compatible with those of the home member state.	Noted
515.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
516.	National Association of Pension Funds (NAPF)	8.	*What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible*? The NAPF recognises that the situation is more complex in relation to cross-border schemes. Here the NAPF favours Option One – allowing 'Member States to decide to impose the	Noted

			application of ring-fencing measures'. This will allow some flexibility for national-level supervisory authorities to advise domestic policy-makers on how existing domestic regulations can be adapted to ensure robust protection for cross-border schemes.	
517.	Pensioenfonds Zorg en Welzijn (PFZW)	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring fencing even in cross-border situations.	Noted
518.	Predica	8.	Predica believes that ring fencing should be avoided as much as possible as it could lead to less risk spreading. However in particular cases and to safeguard the interests of scheme members and to ensure compliance with Host Member State rules in case of cross border activity, one ring fenced fund for all cross border activities could be sought.	Noted
519.	PTK (Sweden)	8.	PTK is not in favour of making ring-fencing obligatory in case of cross-border activity. One reason for IORPs to go cross-border is to achieve economies of scale, but this advantage will be removed if the actual IORP is forced to set up separate legal persons or keep separate assets in the host country.	Noted; the ring-fencing measures proposed do not require the set up of separate legal persons, nor do they require separate assets to be kept in the host country.
520.	Railways Pension Trustee Company Limited ("RPTCL	8.	We have not considered this question.	
521.	TCO	8.	TCO is not in favour of making ring-fencing obligatory in case of cross-border activity. One reason for IORPs to go cross-border is to achieve economies of scale, but this advantage will be removed if the actual IORP is forced to set up separate legal	Noted

			persons or keep separate assets in the host country.	
522.	The Association of the Luxembourg Fund Industry (A	8.	The Respondents agree with EFRP and are not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the host country.	Noted
523.	THE SOCIETY OF PENSION CONSULTANTS	8.	We are opposed to the notion of mandatory ring-fencing, whether for cross-border activity or otherwise. In relation to the proposal for mandatory ring-fencing at the outset of cross-border activity, this would detract from one of the potential attractions of cross-border activity, increase costs and be counter to the stated objective of facilitating such activity. We do not consider that ring-fencing is desirable even in cases where there are differences in investment rules between different Member States. Again, to do so would be likely to further restrict, rather than facilitate, cross-border activity. This would seem counter to the aims of the Internal Market.	Noted
524.	Towers Watson Deutschland GmbH	8.	We believe that any such obligation would ensure that very few (if any) new cases of cross-border activity would occur. This would, once more, appear to frustrate one of the two key objectives in reviewing the Directive.	Noted
525.	UK Association of Pension Lawyers	8.	CfA 3 (Ring-fencing): *What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member States be obliged to introduce such rules or only in cases where investment rules are not compatible*? For the reasons given in response to question 6 above, it is	Noted

			important to limit the use of ring-fencing to the situations where it is necessary to reduce unacceptable risks. A fully ring fenced section of an IORPs is, in effect, an entirely separate IORP. The purposes of the IORP Directive included a vision of cross border pensions with no distinction between different member states, and this is lost entirely if all cross border IORPs are ring fenced. A requirement to ring fence assets will further disincentivise cross border IORPs, particularly given the administrative costs and loss of diversification that would result. We do not see an advantage to ring fencing merely due to cross border activity unless it is introduced as a means of avoiding disproportionate regulation. We would argue strongly that cross-border ring-fencing should not be generally mandatory, and that it would only be appropriate for Member States to be obliged to: ■ introduce ring-fencing only where investment or funding rules or other prudential or privilege rules are not compatible; or ■ permit the operation of ring-fencing rules at the option of an IORP or its sponsor.	
526.	Universities Superannuation Scheme (USS),	8.	What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible?	Noted
527.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring-fencing even in cross-border situations.	Noted
528.	Whitbread Group PLC	8.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted

529.	Zusatzversorgungskasse des Baugewerbes AG	8.	10. We think that it should be up to the member states to rule on ring fencing.	Noted
530.	Towers Watson	8.	9. What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible? Please see our response to question 6. Any such obligation would ensure that very few (if any) new cases of cross-border activity would occur. This would, once more, appear to frustrate one of the two key objectives in reviewing the Directive.	Noted
531.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	9.	See question 6	
532.	AbA Arbeitsgemeinschaft für betriebliche Altersver	9.	The Member State should not be obliged to introduce privilege rules. These are unnecessary in a system where the employer is the ultimate guarantor. Therefore, we prefer Option 2.	Agreed; the advice has been amended accordingly.
533.	ABVAKABO FNV	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Agreed; the advice has been amended accordingly.
534.	AEIP	9.	Privilege rules might be introduced because the social mission of IORP's imposes to protect members rights at maximum level.	Noted
535.	AFPEN (France)	9.	AFPEN agrees to increase member protection with privilege rules.	Noted
537.	AMONIS OFP	9.	*What is the view of stakeholders on the introduction of privilege*	

			rules? Should the Member State be obliged to introduce such rules? If not, why not ? If yes, why? No. Privilege protection rules should remain optional, it being understood that in cross-border schemes the same privilege rules should apply to local members as to cross-border members.	Agreed; the advice has been amended accordingly.
538.	ANIA – Association of Italian Insurers	9.	The ANIA is fully supportive of the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment relationships have the absolute priority. As such, the ANIA sees no reason why these articles should not be implemented in the revised IORP Directive.	Noted
539.	Association Française de la Gestion financière (AFG)	9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts. Assets are employees property. There are no other creditors on these assets so there is no need to protect the assets in case of IORP liquidation.	Noted
540.	Association of British Insurers	9.	The ABI has no further comments to make beyond our response to Question 6.	
541.	Association of Consulting Actuaries (UK)	9.	We believe that the structure and principles of privilege rules should rest wth the Member State given subsidiarity considerations.	Agreed; the advice has been amended accordingly.
542.	Association of French Insurers (FFSA)	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment	Noted

			relationships have the absolute priority. These articles should be implemented in the revised IORP Directive.	
543.	Assoprevidenza	9.	Privilege rules might be introduced because the social mission of IORP's imposes to protect at maximum level members rights	Noted
544.	Assuralia	9.	The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	
545.	Belgian Association of Pension Institutions (BVPI-	9.	*What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not ? If yes, why*? No. Privilege protection rules should remain optional, it being understood that in cross-border schemes the same privilege rules should apply to local members as to cross-border members.	Agreed; the advice has been amended accordingly.
546.	BNP Paribas Cardif	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment relationships have the absolute priority. These articles should be implemented in the revised IORP Directive.	Noted
547.	BT Pension Scheme Management Ltd	9.	We regard privilege rules as highly important. It is vital that the assets which belong to the beneficiaries are not dissipated in any way by the liquidation or other dissolution of an IORP.	Noted

			Member states are best placed to determine how this policy aim should be effected in the specific circumstances of their pensions industry.	
548.	BVI Bundesverband Investment und Asset Management	9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts.	Noted; a section on DC schemes has been added.
549.	CEA	9.	The CEA is fully supportive of the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment relationships have the absolute priority. As such, the CEA sees no reason why these articles should not be implemented in the revised IORP Directive.	Noted
550.	Chris Barnard	9.	I would support the introduction of privilege rules in the national legal framework. However, Member States should have the option to determine if the precedence of members over creditors is absolute. This would improve harmonisation to some extent in this important area, whilst permitting Member States some flexibility to tailor the rules to their own situation.	Noted
551.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Agreed; the advice has been amended accordingly.
552.	De Unie (Vakorganisatie voor werk, inkomen en loop	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be	Agreed; the advice has been amended accordingly.

			mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	
553.	Derek Scott of D&L Scott	9.	Ditto.	
554.	Ecie vie	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 et 276 of the Solvency II Framework Directive.	Noted
555.	European Federation for Retirement Provision (EFRP)	9.	The introduction of privilege rules could perhaps be envisaged, and the EFRP sees the advantage of increased members protection. However, given the differences in approaches between Member States, more analysis is needed before any rules are adopted. The EFRP considers that privilege rules are part of national contract, commercial and insolvency law. Given that Member States enjoy national sovereignty in large areas of these legal fields, Member States should not be asked to introduce privilege rules at national level.	Agreed; the advice has been amended accordingly.
556.	European Fund and Asset Management Association (EFAMA)	9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts. Assets are employees property. There are no other creditors on these assets so there is no need to protect the assets in case of IORP liquidation.	Noted; a section on DC schemes has been added.
557.	European Metalworkers Federation	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However this should not be mandatory.	Agreed; the advice has been amended accordingly.
558.	European Mine, Chemical	9.	Privileged rules are positive for the protection of members of	Agreed; the advice has

	and Energy workers' Federation		Pension Schemes. Member States should have the possibility to introduce them by national law. However this should not be mandatory.	been amended accordingly.
559.	Federation of the Dutch Pension Funds	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Agreed; the advice has been amended accordingly.
560.	Financial Reporting Council	9.	We have not considered this question.	
561.	FNV Bondgenoten	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Noted
562.	Generali vie	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 et 276 of the Solvency II Framework Directive.	Noted
563.	Groupement Français des Bancassureurs	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment relationships have the absolute priority. These articles should be implemented in the revised IORP Directive.	Noted

564.	PMT-PME-MnServices	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Noted
565.	Institute and Faculty of Actuaries (UK)	9.	No response as the issues are not sufficiently clear at this stage.	
566.	Le cercle des épargnants	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 et 276 of the Solvency II Framework Directive.	Noted
567.	Macfarlanes LLP	9.	11. (CfA 3 Ring fencing) What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes, why? 12. Privilege rules should not be introduced. Where they already exist, these should continue to be respected by allowing ring-fencing of any IORP activities to which privilege rules apply. In our view, the introduction of privilege rules has little to do with expanding provision or with the sustainability of pension provision. This is a matter of social and labour law and so should be in the domain of the Member States.	Noted
568.	Mercer	9.	We do not see this as an issue only relating to cross border schemes. We agree that, where schemes are legally separate, albeit managed and/or administered by the same IORP, they should be provided with "a full legal and financial separation of assets and liabilities". This should be part of the protection rules provided by the legal framework of a member state. However, where the scheme is a single legal entity with different	Noted

			sections, then in most cases, as described above, we consider it to be sufficient for the assets and liabilities to be 'administratively' ring fenced, so that legal separation might only apply in limited circumstances. Where, for example, cross border schemes are single schemes with many sections, where the employers participating in those sections are owned by a single entity, we consider that the introduction of stronger ring fencing rules could be excessive, and result in less efficient outcomes for members and for employers.	
569.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged ruling.	Agreed; the advice has been amended accordingly.
570.	National Association of Pension Funds (NAPF)	9.	*What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not ? If yes, why?* The NAPF agrees that it is essential for members of pension schemes to be well protected in the event of liquidation of an IORP. However, privilege rules should be a matter for Member States, which are best placed to take account of other protections provided by their regulatory frameworks. In the UK, for example, important contributions to pensions security are made by the Pension Protection Fund and by the Pensions Regulator's power to impose Financial Support Directions on employers who do not support their company	Agreed; the advice has been amended accordingly.

			pension schemes. These factors should be taken into account when determining how privilege rules should be framed.	
571.	Pensioenfonds Zorg en Welzijn (PFZW)	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation IORPs cannot go bankrupt because of implemented safety nets. Thus, there cannot be an obligation on privileged ruling for the Dutch situation.	Agreed; the advice has been amended accordingly.
572.	Predica	9.	We support the introduction of privilege rules. Similar privilege rules are applied in article 275 and 276 of the Solvency II Framework Directive. Moreover, in Article 275(1)(b)(i) claims by employees arising from employment contracts and employment relationships have the absolute priority. These articles should be implemented in the revised IORP Directive.	Noted
573.	PTK (Sweden)	9.	Given the differences in approaches between the Member States, more analysis is needed before any rules are adopted. Privilege rules are part of national contract, commercial and insolvency law. Since Member States to a great extent enjoy sovereignty in these legal fields, Member States should not be asked to introduce privilege rules at national level.	Agreed; the advice has been amended accordingly.
574.	Railways Pension Trustee Company Limited ("RPTCL	9.	We have not considered this question.	
575.	TCO	9.	Given the differences in approaches between the Member States, more analysis is needed before any rules are adopted. Privilege rules are part of national contract, commercial and insolvency law. Since Member States to a great extent enjoy	Agreed; the advice has

			sovereignty in these legal fields, Member States should not be asked to introduce privilege rules at national level.	been amended accordingly.
576.	The Association of the Luxembourg Fund Industry (A	9.	The introduction of privilege rules could perhaps be envisaged, and the Respondents agree with EFRP who sees the advantage of increased members protection. However, given the differences in approaches between Member States, more analysis is needed before any rules are adopted and the suggestions under point 14 of section 5.6. should therefore not be implemented. The Respondents agree with EFRP and consider that privilege rules are part of national contract, commercial and insolvency law. Given that Member States enjoy national sovereignty in large areas of these legal fields, Member States should not be asked to introduce privilege rules at national level.	Agreed; the advice has been amended accordingly.
577.	THE SOCIETY OF PENSION CONSULTANTS	9.	Again we feel that the consultation period is far too short to consider the potentially significant proposal to interfere with domestic 'privilege' rules – promoting the interests of one party (whether members, those employed – in countries where this occurs – by the pension fund/IORP or tax authorities over those of others).	
578.	Towers Watson Deutschland GmbH	9.	This should be a matter for individual Member States to determine in the context of their national pension systems.	Agreed; the advice has been amended accordingly.
579.	UK Association of Pension Lawyers	9.	CfA 3 (Ring-fencing): *What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes why*? (a) Article 7 of the IORP Directive requires each IORP to limit its	Noted; advice on privilege rules amended accordingly

			activities to retirement benefit related operations and activities arising therefrom to avoid cross-contamination risk (e.g. between providing pension benefits and operating nuclear power stations). Furthermore, under Article 18(2) of the IORP Directive, IORPs may not borrow (other than for liquidity purposes and on a temporary basis) or act as a guarantor on behalf of third parties. (b) In general, the external creditors of a UK IORP (i.e. creditors other than members and their survivors who have rights to receive pension benefits) are few in number and, in general, will be limited to service providers to the UK IORP in respect of their fees and to the tax authorities for any taxes that should have been withheld on pension benefits when paid. (c) However, where, as is permitted by Article 18(1)(d), the IORP has invested in derivative instruments for the purpose of reduction in investment risk or to facilitate efficient portfolio management, there will be situations where the IORP will be net "out of the money" on the derivative instruments which it has entered into with that counterparty. In such a situation, the counterparty will be an external creditor of the IORP. (d) If privilege rules were to be put in place, along the lines of those under the Insurance Directives under which direct policyholders rank ahead of other unsecured creditors on the insolvency of an insurance company, then this is likely to make a counterparty dealing with the IORP willing to transact only on the basis of being granted security over the assets of the IORP. Note: At present, most UK IORPs will have liabilities to pay benefits which, if valued as the cost of securing those liabilities with an insurance company, would substantially exceed their assets. (e) We would note that, in the UK, this has become an	

			increasingly common approach for those dealing with insurance companies who are not direct policyholders. Examples include: (i) reinsurance policyholders, where it is normal practice for floating charges to be entered into to put the reinsurance policyholder in the same position as the direct policyholder, and (ii) other substantial unsecured creditors of insurance companies (usually the UK IORP established by that insurance company to provide pension benefits for its employees and former employees) which may seek a fixed charge over the assets of the insurance company in order to prevent the claims of the UK IORP ranking behind the claims of the direct policyholders. (f) In other words, if you move from a theoretical analysis of the position to a practical impact, it would appear to be the case that such a preference rule would, in practice, simply increase the cost of doing business (by appropriate legal mechanisms being used to negate the consequences of the privilege rule).	
580.	UNI Europa	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However this should not be mandatory.	Agreed; the advice has been amended accordingly.
581.	Universities Superannuation Scheme (USS),	9.	What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not ? If yes, why?	
582.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation the IORP's cannot go bankrupt because of implemented safety nets. Therefore for the Dutch situation there cannot be an obligation on privileged	Agreed; the advice has been amended accordingly.

			ruling.	
583.	Whitbread Group PLC	9.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
584.	Zusatzversorgungskasse des Baugewerbes AG	9.	11. Privilege rules in systems where the completeness of employers of a whole industry is the ultimate guarantor are unnecessary.	Noted
585.	Towers Watson	9.	10. *What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes, why*? This should be a matter for individual Member States to determine in the context of their national pension systems.	Agreed; the advice has been amended accordingly.
586.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	10.	The OPSG basically endorse option 2 and agrees with the EIOPA's analysis, since we believe that a clearer distinction between prudential regulation and social and labour law is needed in order to clarify the Home member state's and Host member state's responsibilities in case of cross-border activity. We also agree that the requirements of the IORP Directive listed under 7.2.4 should be in the EU prudential regulation framework. However, we emphasize that the pension promises are primarily defined by the SLL and not by prudential regulation. Pension design, method of financing pension benefits as well as supervision are strongly correlated and build an interacting system. Changing or redesigning prudential regulation could have a negative impact on SLL, and even impinge on MS competence on SLL, thereby leading to overregulation and consequently to additional costs of occupational pensions. For example, an integral part of the benefit design is the method	Noted

			of financing the pension promise, which in turn is based on a certain discount rate and biometric tables. Changes in prudential regulation affecting these parameters could have a severe impact on the financing of occupational pension provision. To the extent that this may influence the benefit promise, which mostly is regulated by SLL, it may be regarded as an infringement of a member state's competence. Against this background, EU level prudential regulations for cross-border activity must be designed so as to leave the possibility to supervisors to take into account the Host member state's SLL in their supervisory requirements. In the context of EIOPA's statement in paragraph 7.3.3 that some areas of prudential regulation might eventually also be considered as SLL, the OPSG thinks that EU level prudential regulation for cross-border activities should accept parameters of national SLL and should be flexible enough to be implemented by MS with regard to their own SLL. This should be clearly set in the future IORP Directive text (Level 1). The OPSG thinks that prudential regulation and SLL must mutually exclude each other.	
587.	AbA Arbeitsgemeinschaft für betriebliche Altersver	10.	The AbA agrees, in principal, with the analysis and prefers Option 2. We agree with EIOPA that a clearer definition could facilitate the distribution of competences in cross-border transactions (7.37) but misunderstanding must be avoided. Therefore, we would like to stress: The list in the blue box (Art. 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19; if necessary, supplemented by other articles in the process of the review of the directive) or such a new article in the directive should only help to "determine the scope of prudential regulation as administered by the Home member state for the purposes of cross-border activity". The list should not define the future EU	Noted

			area of regulation trying to achieve "a level of harmonisation where EU legislation does not need additional requirements at the national level" (see CfA). There is a wide variety in the scope of social and labour law amongst Member States and the interaction between social and labour law and prudential law has to be taken into account. Given this situation, it would make sense to maintain the character of the existing IORP Directive as one that sets out minimum standards which can be augmented at the Member State level. In addition, it seems difficult to avoid "concurrent competence".	
588.	ABVAKABO FNV	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
589.	AEIP	10.	37. AEIP agrees. 38. However, "conditions of operations" could also include governance and organisation of the IORP. It seems advisable to provide for a default clause in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible : all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State.	Noted
591.	AMONIS OFP	10.	Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2? Yes. However, AMONIS OFP wishes to stress that "conditions of operations" should also include governance and organisation of	Noted

			the IORP. Moreover, it seems advisable to provide for a default clause (all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State) in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible. For the sake of clarity and transparency, AMONIS OFP proposes to ask Host Member States to provide for a comprehensive summary of the applicable social and labour provisions (instead of just a copy of the applicable legislation) this could, as stated by EIOPA in 7.3.18, increase transparency and facilitate the implementation of cross-border activity.. AMONIS OFP considers that the Belgian case may serve as a good example of a clear distinction between prudential law on the one hand and social and labour law on the other.	
592.	ANIA – Association of Italian Insurers	10.	The ANIA agrees with the analysis of the options. In addition the ANIA fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. The ANIA agrees that assigning the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the 'social and labour law in the host member state'. Finally the ANIA suggests including general governance principles to the list.	Noted
593.	AON HEWITT	10.	We submit that the Prudential regulation should be governed by the applicable regulations of the home country of the cross-border institution. The home country should have in practice the lead responsibility on determining and following up on prudential	Noted

			regulation issues. Any solution must ensure that an institution has to deal with only one supervisory authority rather than several different authorities. The current Directive identifies a list of items that are under the responsibilities of the home state. The challenge in considering such a list as prudential rules runs the risk of circumventing member State competence and undermines the principle of mutual recognition underpinning the IORP Directive and most of the Single Market regulation. Therefore, transparency and convergence rather than harmonisation seems to be more appropriate objectives. In particular by ensuring that each member state clearly identifies and separates SLL from what they consider prudential rules. An indication should be made into the Directive to ensure that same or similar items are not covered by two jurisdictions or authorities even within the same country. The revised directive should also indicate a procedure to settle problems that may arise between national authorities.	
594.	Association Française de la Gestion financière (AFG)	10.	The interpretation of what qualifies as social and labour law differs from one Member State to another. We support the idea of more transparency from each Member Styate on what is considered as social and labour law. As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions.	Noted
595.	Association of British Insurers	10.	Yes. However, while Option 1 does not provide a solution to address the existing confusion about the difference between prudential law and social and labour law, the ABI believes there	Noted

			is little evidence to show that the changes under Option 2 will bring any substantive benefits. We are pleased to see the list provided in the CP has been revised to focus on issues of a real prudential nature.	
596.	Association of Consulting Actuaries (UK)	10.	Yes	Noted
597.	Association of French Insurers (FFSA)	10.	24. The FFSA fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. The FFSA agrees that assigning the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the 'social and labour law in the host member state' and would strengthen protection for cross-border members. It should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	Noted
598.	Assoprevidenza	10.	We agree. However, "conditions of operations" could also include governance and organisation of the IORP. It seems advisable to provide for a default clause in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible : all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State	Noted
599.	Assuralia	10.	CfA 4: PRUDENTIAL REGULATION AND SOCIAL AND LABOUR LAW *Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2*?	Noted

			The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks: 1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP. 2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios. The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures. 3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries: a) With regard to the pension institutions, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements. b) With regard to the pension obligation as such, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of	

			recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently. Prudential regulation and social and labour law The draft response mainly deals with the cross-border issues linked to the demarcation between prudential regulation and social/labour law. i.e. to determine more clearly which prudential issues will be administered by the home member states' supervisory authority in contrast with other (social and labour law) issues controlled by the host member state. A fundamental issue closely linked to this question regards the influence that social and labour law can or cannot have on prudential regulation and supervision. We believe it is important for the protection of employees and beneficiaries to harmonise the level of security (prudential) in all member states of the EU, especially in a context of increased employee mobility and cross-border activity. The European Commission's objective of creating an internal market for occupational retirement provision on a European scale seems technically impossible to achieve if prudential standards would not be harmonised. While national social and labour law has an important role with regard to the design of the pension obligation (cfr. draft response nr. 8.3.15), it seems technically inevitable to accept that European prudential requirements must safeguard the actual materialisation of that obligation (harmonised security level). The desire of the Commission to harmonise the security level for all pension providers - regardless of the pension obligations' design itself – therefore seems to be consistent and	

			appropriate (cfr. draft response nr. 8.3.1.). The draft response mentions that member states may have a different appreciation with regard to the trade-off between the security (confidence level) and the affordability of pension benefits (cfr. draft response nr. 8.3.15-8.3.16). This needs to be approached with extreme caution. Lowering the confidence level because of affordability means that the pension sponsor and supervisor accept an increased risk of failure to provide the promised benefits to employees. Decisions with regard to the potential reduction of pension benefits should in our view be made in the design of the pension obligation itself (e.g. the level of guarantees and benefit mix). Contrary to what is suggested in draft response nr. 8.2.25, it should not have an impact on the prudential confidence level (i.e. the minimum level of probability that the promise will be kept).	
600.	Belgian Association of Pension Institutions (BVPI-	10.	*Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2*? Yes. However, BVPI-ABIP wishes to stress that "conditions of operations" should also include governance and organisation of the IORP. Moreover, it seems advisable to provide for a default clause (all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State) in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible. For the sake of clarity and transparency, BVPI-ABIP proposes to ask Host Member States to provide for a comprehensive summary of the applicable social and labour provisions (instead of just a copy of the applicable legislation) this could, as stated	Noted

			by EIOPA in 7.3.18, increase transparency and facilitate the implementation of cross-border activity.. BVPI-ABIP considers that the Belgian case may serve as a good example of a clear distinction between prudential law on the one hand and social and labour law on the other.	
601.	BNP Paribas Cardif	10.	BNP Paribas Cardif fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. BNP Paribas Cardif agrees that assigning the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the 'social and labour law in the host member state' and would strengthen protection for cross-border members. It should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	Noted
602.	Bosch Pensionsfonds AG	10.	We welcome the proposed definition of prudential regulation in the revised Directive. Clearer regulatory guidelines at EU level will help reduce the volume of additional national regulation. However, the following important aspects should be taken into account: Precedence of pension / labour law: To avoid collisions between prudential regulation and SLL, the new directive should clearly set down the following principle: Precedence of pension / labour law: measures deemed permissible under pension / labour law - individually or	Noted

			collectively - in MS should not be prevented or blocked by supervisory legislation. Background: The appropriate and legally effective development of collective pension plans in sponsoring companies under the MS national pension and labor law needs often completely separate, complex and extensive implementation procedures under the supervisory legislation applicable to IORPs. The implementation of such - under pension and labor law completely lawful - changes in IORPs is at times not possible within the supervisory legislation of MS. This results in the complex formation of segments and unnecessary group distinctions in the IORPs. So, what is permitted in accordance with the pension or labor legislation of MS, taking into account the principle of proportionality, may not be prevented or blocked by supervisory legislation or authorities. Regulatory intervention against measures permissible in accordance with pension and labor legislation is not justifiable. If sponsoring companies and labor representative bodies thus agree on collective changes in accordance with pensions and labor legislation with past and future effect, then these collective changes must also be possible in the IORPs of the sponsoring companies and acceptable in accordance with supervisory legislation. The same applies to: - sector IORPs for industry-wide, collective lawful changes with past and future effect and - for members group transfers in accordance with labor legislation on the occasion of company mergers, takeovers or other transactions from an IORP of a sponsoring company to another IORP of another sponsoring company.	

			IORP stakeholder group also for MS supervisory authorities: In order to provide national supervisory authorities with advice and support regarding specific IORP issues and perspectives, IORP interest groups should be set up at the supervisory authorities of MS. These interest groups should particularly include experienced practitioners of the sponsoring companies and the supervised IORPs. Such expert committees would help to consistently draw appropriate attention to the specific features of IORPs in the new architecture of occupational pension supervision in the MS. It would thus be made clear at a national level what is already firmly anchored at a European level for EIOPA. Restricting the pure volume of supervisory legislation in the EU and MS: The currently applicable IORP directive comprises 25 articles on 13 pages (the EU directive "Solvency II" comprises more than 300 articles with over 150 pages!), added to this are supervisory legislation, supervision ordinances and reference documents from MS and their supervisory authorities consisting of several hundred articles and several thousand pages. The sheer mass of EU and MS regulation is not to be expanded but, instead, must be purposefully restricted. Also, evidence exists that a considerable amount of "gold plating" by MS has already taken place in the transfer of Solvency II into national law - this must be avoided for IORP II at all cost. Further, a large number of IORPs are operated by the personnel of the sponsoring companies; these institutions are generally very well run. The same applies for the sector-wide institutions of the social partners. To overload these sponsoring companies and social partner institutions with supervisory regulations is	

			economically counterproductive. The aim must be to deliberately restrict and concentrate supervisory regulation according to the principle of proportionality.	
603.	Bosch-Group	10.	We welcome the proposed definition of prudential regulation in the revised Directive. Clearer regulatory guidelines at EU level will help reduce the volume of additional national regulation. However, the following important aspects should be taken into account: Precedence of pension / labour law: To avoid collisions between prudential regulation and SLL, the new directive should clearly set down the following principle: Precedence of pension / labour law: measures deemed permissible under pension / labour law - individually or collectively - in MS should not be prevented or blocked by supervisory legislation. Background: The appropriate and legally effective development of collective pension plans in sponsoring companies under the MS national pension and labor law needs often completely separate, complex and extensive implementation procedures under the supervisory legislation applicable to IORPs. The implementation of such - under pension and labor law completely lawful - changes in IORPs is at times not possible within the supervisory legislation of MS. This results in the complex formation of segments and unnecessary group distinctions in the IORPs. So, what is permitted in accordance with the pension or labor legislation of MS, taking into account the principle of proportionality, may not be prevented or blocked by supervisory legislation or authorities. Regulatory intervention against	Noted

			measures permissible in accordance with pension and labor legislation is not justifiable. If sponsoring companies and labor representative bodies thus agree on collective changes in accordance with pensions and labor legislation with past and future effect, then these collective changes must also be possible in the IORPs of the sponsoring companies and acceptable in accordance with supervisory legislation. The same applies to: - sector IORPs for industry-wide, collective lawful changes with past and future effect and - for members group transfers in accordance with labor legislation on the occasion of company mergers, takeovers or other transactions from an IORP of a sponsoring company to another IORP of another sponsoring company. IORP stakeholder group also for MS supervisory authorities: In order to provide national supervisory authorities with advice and support regarding specific IORP issues and perspectives, IORP interest groups should be set up at the supervisory authorities of MS. These interest groups should particularly include experienced practitioners of the sponsoring companies and the supervised IORPs. Such expert committees would help to consistently draw appropriate attention to the specific features of IORPs in the new architecture of occupational pension supervision in the MS. It would thus be made clear at a national level what is already firmly anchored at a European level for EIOPA. Restricting the pure volume of supervisory legislation in the EU and MS: The currently applicable IORP directive comprises 25 articles on 13 pages (the EU directive "Solvency II" comprises more than	

			300 articles with over 150 pages!), added to this are supervisory legislation, supervision ordinances and reference documents from MS and their supervisory authorities consisting of several hundred articles and several thousand pages. The sheer mass of EU and MS regulation is not to be expanded but, instead, must be purposefully restricted. Also, evidence exists that a considerable amount of "gold plating" by MS has already taken place in the transfer of Solvency II into national law - this must be avoided for IORP II at all cost. Further, a large number of IORPs are operated by the personnel of the sponsoring companies; these institutions are generally very well run. The same applies for the sector-wide institutions of the social partners. To overload these sponsoring companies and social partner institutions with supervisory regulations is economically counterproductive. The aim must be to deliberately restrict and concentrate supervisory regulation according to the principle of proportionality.	
605.	BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASS. (BVCA)	10.	The BVCA believes that the subsidiarity principle applies to pensions legislation It is the primary responsibility of member states to regulate retirement saving in a way that works best for their citizens. As set out above, pension arrangements differ substantially from one member state to another. Different weights are given to contributions from states, employers, and the individual in different member states. It would be problematic to deploy legislative judgement on the validity of the respective weights currently given to each of these by different member states.	Noted
606.	BT Pension Scheme Management Ltd	10.	We do not agree. There are numerous differences in terms of national social and labour laws and we do not believe that a uniform supervisory approach would assist in clarifying this -	Noted

			there is a risk of confusion and of a failure of the supervisory standards to match with the social and labour laws. Rather, we believe that it is necessary for member states to develop their own supervisory approaches which match more seamlessly with local social and labour laws.	
607.	BVI Bundesverband Investment und Asset Management	10.	The interpretation of what qualifies as social and labour law differs from one Member State to another. This situation creates additional hurdles to cross-border IORPs. It would therefore be useful to achieve a common understanding of what social and labour law should encompass. As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions.	Noted
608.	CEA	10.	The CEA agrees with the analysis of the options. In addition the CEA fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. The CEA agrees that assigning the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the 'social and labour law in the host member state'. Finally the CEA suggests including general governance principles to the list.	Noted
609.	Chris Barnard	10.	I broadly agree with the analysis of the options as laid out in the advice. Regarding Paragraph 7.3.20, I do not believe that there is enough quantitative analysis to conclude that "implementation of option 2 is likely to produce overall benefits slightly exceeding associated costs".	Noted

610.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
611.	CONFEDERATION OF BRITISH INDUSTRY (CBI)	10.	The subsidiarity principle must apply to pensions regulation When considering the question of pensions regulation, CBI members believe it is the primary responsibility of member states to regulate retirement saving in a way that works best for their citizens. Pension arrangements differ substantially from one member state to another because of historical and social developments – most notably in the design of the first pilar, and the different structures of second and third pillar that have developed because of it. This diversity of provision – built on fundamentally different, but equally valid, approaches to state pension systems – means that we should avoid creating a 'one-size-fits-all' approach to pensions at EU level. The differing weight each pillar – state, workplace and individual provision – has in each member state must also be taken into account.	Noted
612.	De Unie (Vakorganisatie voor werk, inkomen en loop	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to	Noted

			achieve.	
613.	Derek Scott of D&L Scott	10.	No.	Noted
614.	Ecie vie	10.	We agree with the analysis and fully support option 2.	Noted
615.	EFI (European Federation of Investors)	10.	Yes we agree	Noted
616.	European Federation for Retirement Provision (EFRP)	10.	The EFRP agrees that option 2 is the better one. It agrees with EIOPA that there should not be a "fit-for-all" definition of prudential law (7.3.7.), and that Social and Labour Law varies across Member States. The EFRP finds that the full funding requirement in case of cross-border activity is contrary to the principles of the European single market and presents an obstacle to cross-border activities.	Noted
617.	European Fund and Asset Management Association (EFAMA)	10.	The interpretation of what qualifies as social and labour law differs from one Member State to another. This situation creates additional hurdles to cross-border IORPs. It would therefore be useful to achieve a common understanding of what social and labour law should encompass. As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions. We would therefore have welcomed a greater focus on how to address this issue.	Noted
618.	European Metalworkers Federation	10.	From the viewpoint of participants of IORP pensionschemes there is no need to extend or adjust existing regulation on	Noted

			cross-border activities of IORPs	
619.	European Mine, Chemical and Energy workers' Federation	10.	From the viewpoint of participants of IORP pensionschemes there is no need to extend or adjust existing regulation on cross-border activities of IORPs	Noted
620.	FAIDER (Fédération des Associations Indépendantes	10.	Yes we agree	Noted
621.	Federation of the Dutch Pension Funds	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
622.	Financial Reporting Council	10.	We have not considered this question.	
623.	FNV Bondgenoten	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
624.	Generali vie	10.	We agree with the analysis and fully support option 2.	Noted
625.	Groupe Consultatif Actuariel Européen.	10.	We agree with the analysis and impacts as laid out, including the preference for option 2	Noted
626.	Groupement Français des Bancassureurs	10.	FBIA fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. FBIA agrees that assigning	Noted

			the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the 'social and labour law in the host member state' and would strengthen protection for cross-border members. It should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	
627.	PMT-PME-MnServices	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
628.	HM Treasury/Department for Work and Pensions	10.	The proposal to define prudential regulation is likely to have an indirect limitation on member state competence over social and labour law. While we cannot determine the precise impact, we do not agree that this proposal is necessary, and the risks of limiting Member State competence are such that we do not agree to this proposal.	Noted
629.	IMA (Investment Management Association)	10.	We do not have a firm view on the options presented. National social and labour law remains one of the most significant obstacles to cross-border pensions activity in the EU. As the evidence collected as part of the CEIOPS analysis of this area demonstrates, national practices vary widely.While we appreciate the potential clarity offered by Option 2, there remain, as the document points out, significant grey areas. Instead of the focus on harmonisation of prudential requirements seen in the Commission CfA, we would have	Noted

			welcomed greater exploration of national regimes and the ways in which prudential regulation and social and labour law constitute a problem in practice for the operation of cross-border IORPs. This would help all stakeholders to gain a better understanding of what minimum requirements would be necessary to improve a single market in this area.	
630.	ING Insurance	10.	Each Member States should retain the right to develop its own financial assessment frame work with prudential rules. Additionally, Member States should report regularly to EIOPA about rules applying to these schemes and EIOPA should assess the types and levels of protection ensured throughout Europe. But there should only be a minimum level of harmonization, leaving room for local preferences and habits. On the other hand the revised Directive should avoid the problems created by contradicting regulation. EIOPA's draft advice proposes to include a new article in the revised IORP Directive describing the scope of prudential regulation. ING believes that social and labour law should focus on the relation between the employer and the employee whereas prudential regulation should regulate the pension providers. We agree with option 2	Noted
631.	Institute and Faculty of Actuaries (UK)	10.	Yes, this provides clarity to the operation of cross border IORPs and broadly aligns with current practice.	Noted
632.	Italian Banking Association	10.	ABI agrees with the analysis laid out in EIOPA's advice as it is important to clarify the scope of prudential regulations in order to properly allocate tasks between the Home supervisor and the Host supervisor in the event of cross-border activity.	Noted

			ABI prefers option 2, with the exception of the statement which states that: "In parallel, the same article should formalize the "concurrent competence" regime currently in place with respect to the information requirements pursuant to art. 11". In ABI's view, providing concurrent competence would mean that both Home and Host information requirements could be satisfied, which is not acceptable. Therefore ABI proposes to review the aforementioned statement as it follows: In parallel, the same article should formalize "the only competence" regime of the Host supervisor with respect to the information requirements pursuant to art. 11".	
633.	Le cercle des épargnants	10.	We agree with the analysis and fully support option 2.	Noted
634.	Mercer	10.	The options presented, to do nothing, or to define the scope of prudential regulation, seem complete and we agree with the analysis. We agree with the recommendation to adopt option 2.	Noted
635.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
636.	National Association of Pension Funds (NAPF)	10.	PRUDENTIAL REGLATION AND SOCIAL AND LABOUR LAW Do stakeholders agree with the analysis of the options as laid	Noted

			out in this advice, including the preference for option 2? The NAPF acknowledges that there may be a case for a clearer distinction between prudential regulation and social / labour law, in order to clarify the boundaries of each regulator's activities. But this should not be allowed to generate extra regulatory burdens. In the interests of evidence-based policy-making, EIOPA should ask the EC to demonstrate that there is a demand or need for a change in the law in this area. EIOPA should also press the EC to show how a change in the law would strengthen cross-border pension provision.	
637.	Pan-European Insurance Forum (PEIF)	10.	Clarification via Option 2 seems useful. It should be noted that Option 2 does not preclude use of the Court of Justice. However, a principle-based approach starting from the concept of economic activity (mentioned in another context in EIOPA's first consultation but not in the second – and supported by PEIF) would seem useful. Simply listing provisions in the current IORP Directive as prudential risks being circular and avoids difficult questions. For example, there are a number of issues in the current consultation where the interaction with social and labour law is critical (example: who has competence for deciding confidence levels - Question 36). So-called grey areas should not be encouraged. Many issues	Noted

			may resolve themselves into 'black' and 'white' by looking at them in greater detail. Linkages between the notion of social and labour law and the concept of the general good also need clarifying. The wording of the IORP Directive also needs bringing up to date to reflect changes introduced by the Lisbon Treaty. In many areas of social and labour policy there has been no transfer of competences to the European Union. This means that the Directive should refer both to the principle of conferral and to the principle of subsidiarity. The freedom of each Member State to decide its social and labour law cannot override internal market rules on economic activity as Member States have conferred powers here. As the Commission felt able to give guidance in its Communication of 2000 on the issue of general good in the area of insurance, we see no reason why a similar approach cannot also be taken to social and labour law. Consideration should be given to a Commission Communication combining treatment of general good and social and labour law issues since cross-border activity by IORPs may also face general good obstacles.	
639.	Pensioenfonds Zorg en Welzijn (PFZW)	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefor contrary to the goals the European Commission wants to achieve.	Noted
640.	Pensionskasse der Mitarbeiter der Hoechst-	10.	Comment on CfA 4: Prudential Regulation and Social and Labour Law	Noted

	Gruppe V		With chapter 4 of the Call for Advice, the European Commission intends to clarify the scope of prudential regulation at EU-Level trying to set up a proper distinction between prudential regulation and social and labour law (SLL), whose contents are being determined by the Member States. However, one has to question, if such an uniform single set of regulation can be set up across Europe with not impairing the national SLL-Systems and therefore being out of the competence of EU-Legislation. In fact, this will very likely be the case because the pension systems as well as the SLL-Systems in the different states have historically developed in country specific ways. The design of the pension promise, the delivery and protection of pension benefits, the methods of financing the pension benefits as well as the methods of surveillance of the IORPs are therefore inextricably linked with each other. Changing or redesigning the rules for only one of these beforesaid structural elements comprising the pension benefit will therefore have wide and strong repercussions like it is the case by communicating vessels. Therefore, on the area of occupational retirement provision, any changes in prudential regulation, for example on the area of calculating and certification of technical provisions, funding of	

			technical provisions, regulatory own funds etc. will have a severe impact on the cost of financing defined benefit plans, like it is the case in Germany. This is because the methods of financing the pension promise - for example the discount rate to be applied or the biometrical tables to be used – are an integral part of the delivered pension promise. The sponsoring employer as well as the beneficiaries will and must have trust in a sustainable regulatory framework covering all the beforesaid areas. If one, as raised by the CfA (introducing risk based Supervision for IORPs), would apply the quantitative methods of Solvency II to IORPs, this would cause a tremendous increase of the necessary own regulatory funds. This will have an intense and severe impact in financing the pension promise, which might result in a reduction of benefits and / or increasing contributions as well as the closing of the pension schemes; their regulatory framework being contained in the national SLL. From this follows, that changing prudential regulation will likewise also have a severe impact to SLL. As SLL covers the pension promises and its protection against insolvency, the co-determination, etc. in its entirety, prudential regulation can not prevail over SLL, because this would mean that in fact prudential regulation will play the decisive role whether or not there will be a vital environment for pension schemes on a state level. As pointed out and also mentioned by EIOPA on the draft response (8.3.7), a precise definition of the scope of prudential	

			law at EU-level would in effect result in an indirect limitation to the competences of the member states on the area of SLL. A positive scope-definition of prudential law would at the same time mean to limit the scope of SLL by reducing its scope to those parts, which are not to be determined as prudential law. However, such an indirect negative impact on SLL would not be covered by the competences conferred upon the European Union. The Treaty on European Union determines that "the limits of Union competences are governed by the principle of conferral" (Art. 5 p. 1). This principle means that "the Union shall act only within the limits of the competences conferred upon it by the Member States" while competences not conferred upon the Union "remain with the Member States" (Art. 5 p. 3). On the area of SLL, there was no conferral upon the European Union by the Member States that would give room for an indirect negative scope definition. Furthermore, Article 114 of the Treaty on the Functioning of the European Union (formerly Art. 95 TEC), which is the legislative competence for the current IORP-Directive and will that probably be again for a "revised" IORP-Directive, especially excludes measures on the area of SLL. Therefore, a "revised" IORP-Directive cannot be used to limit the scope of the national SLL.	
641.	Predica	10.	Predica fully supports option 2 which includes an article in the revised Directive describing the scope of prudential regulation as assigned in the home member state. Predica agrees that assigning the mentioned list of prudential domains to the home member state will avoid regulatory arbitrage because of the	Noted

			'social and labour law in the host member state' and would strengthen protection for cross-border members. It should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	
642.	PTK (Sweden)	10.	PTK is in favour of option 2. There should not be a "fit-for all" definition of prudential law. SLL varies across Member States. In our opinion the full funding requirement in case of cross-border activity is contrary to the principles of the European single market and presents an obstacle to cross-border activities.	Noted
643.	Railways Pension Trustee Company Limited ("RPTCL	10.	We have not considered this question.	
644.	Standard Life Plc	10.	Yes, we agree with the analysis of the options. However, we do not believe there is sufficient evidence to show that the changes under Option 2 will deliver significant benefits.	Noted
645.	TCO	10.	TCO is in favour of option 2. There should not be a "fit-for al" definition of prudential law. SLL varies across Member States. In our opinion the full funding requirement in case of cross-border activity is contrary to the principles of the European single market and presents an obstacle to cross-border activities.	Noted
646.	The Association of the Luxembourg Fund Industry (A	10.	The Green Paper emphasized the issue: "According to the responses to the Green Paper there is a lack of clear definition of the scope of SLL". In our contribution to the Green Paper the Respondents had	Noted

			already identified this major obstacle to the development of cross-border IORPs. The key brake on cross border activity is undoubtedly the obligation for a pension fund to apply the host Member State's social and labour law to the relationships between the sponsoring undertaking and its pension scheme members. Those provisions are so diverse and so divergent within the EEA that it becomes very difficult, even impossible for a pension fund to administer schemes governed by foreign laws. Some Member States have moreover an extensive interpretation of the concept of "social and labour law". Each Member State has, in addition, its own criteria with regard to this matter. Most of the Member States have chosen a "defensive" approach. As a result, would it not be possible at European level to give less latitude to the Member States in this field? The Respondents propose only to impose on the pan-European funds the obligation to comply with "core" social provisions with regard to occupational pensions, such as, for instance, the social principles which are applicable when an employee is posted in an EEA State? This would not aim at limiting the rights of pension scheme members, which would remain governed by ad hoc social provisions; however, the management of those pension funds would be simplified via this minimum harmonisation of the social provisions at European level. Those pension funds could be obliged to comply with some specific rules set forth by social law. Those principles could be named "core" social rules, but only where related to occupational pensions (2nd pillar), which would be applicable when it comes to cross-border structures, the	

			sponsoring undertaking itself being responsible for compliance with any other social provisions. Indeed, it is not necessary for pension funds to ensure compliance with the entire social law of the 27 Member States (and EEA States) where the sponsoring undertakings are likely to be established. The latter are solely responsible for the particular aspect of supplementary pension. Moreover, perfect knowledge of the social legislation of every EEA Member State by a pension fund established in one of those States remains a mere utopia. It seems therefore essential to reduce the scope of social rules that the host State may impose on an IORP located in another Member State. If not, the Respondents fear that there will never be a major development of pan-European IORPs in view of the difficulty involved in knowing, implementing and monitoring all of these social rules. The creation of pan-European IRPs should permit, in principle, the reduction of the cost of creating supplementary pensions through economies of scale. This goal will certainly not be met if applying the social law of 27 Member States is required. This is why the Respondents insist on limiting the obligations of IORPs to comply with a "base" of selected social rules relating to supplementary pensions. There is no question of reducing the rights of members. On the contrary, they must remain fully protected, but the Respondents recommend that we should avoid falling into a formalism which would serve as a substitute for a "State protectionism." IORPs should thus be required to comply with social rules of the host State, applicable in the following areas, including:	

			☐ Setting-up, amendment and repeal of supplementary pension schemes; ☐ Conditions for membership; ☐ Participation of the members and / or their representatives in the management ☐ Vested rights (conditions, calculation); ☐ Options for affiliates if they leave the sponsoring company before retirement age; ☐ Benefits: conditions (retirement age, designation of beneficiaries ...) and payment options (annuities or lump sum ...). The respect of the other social provisions should remain the responsibility of the sponsoring undertakings themselves. The Respondents are in favour of option 2.	
647.	THE SOCIETY OF PENSION CONSULTANTS	10.	Yes.	Noted
648.	Towers Watson Deutschland GmbH	10.	We agree with EIOPA's broad analysis, but believe that the extent to which Member States consider defining prudential regulation as an indirect limitation on their competence over Social and Labour Law (SLL) may be underestimated. If, as is acknowledged, Member States choose to determine certain 'prudential matters' as SLL, the change envisaged will have been futile and may lead to greater confusion than currently exists.	Noted
649.	UK Association of Pension	10.	CfA 4 (Prudential regulation and social labour law): Do	Noted

	Lawyers		stakeholders agree with the analysis of the options as laid out in this advice, including the preference for option 2? The options presented, to do nothing, or to define the scope of prudential regulation, seem complete and we agree with the analysis. We agree with the recommendation to adopt option 2. We note that the CfA has asked EIOPA to address the following subject – "The IORP Directive needs to determine the scope of prudential regulation, as administered by the home Member State". Currently, the scope of prudential regulation is not explicitly defined under the Directive. The EIOPA response discusses the fact that social and labour law ("SLL"), while illustrated with a few examples, is also not defined. SLL in the context of cross-border activity is the responsibility of the "host state", in contrast to prudential regulation which is the responsibility of the "home state" (i.e. the country in which the IORP is registered). The response highlights the fact that different Member States have prescribed SLL in different ways (to some extent a function of the very different domestic circumstances and legal structures underlying the occupational pension arrangements in each country). Although analysis has not been carried out, it is felt likely that prudential regulation is similarly subject to significant variation between Member States. The lack of definition of both prudential regulation and SLL means there is significant scope for both overlap and "gaps" in areas of responsibility in the context of cross-border activity. The EIOPA response recommends explicitly defining prudential regulation, based on existing requirements currently mentioned throughout the Directive as responsibilities of the Member State in which the IORP is location. It recognises that this will still leave scope for "grey areas" and recommends formalising a	

			system of "concurrent competence" where two sets of requirements (for example on information to be given to members) coexist. Although not included in the final advice, the discussion of the policy option suggests that where a conflict arises the SLL should prevail. While many specificities of IORPs have been identified, there is little focus on the fact that very many (if not the majority of) IORPs are not marketing to the public and that legislation aimed at protecting customers in relation to insurance companies has no application in relation to IORPs, which may be viewed as 'safe-deposit boxes' for an employer's pension promises to its employees. This fundamental difference is also the reason why the sanctions for breaching security mechanisms under Solvency II cannot be easily adapted to IORPs (terminating activities, transferring their business to another insurance company). The fact that not all arrangements that provide benefits for employees will be covered, such as book reserve schemes, is relevant to and calls into question the justifications for legislative changes based on protection of members and beneficiaries. The vast majority of UK pension schemes – a high proportion of the existing IORPs in the EU – are more akin to book reserve arrangements in that they provide security for an employer's pensions promises; the major difference is that they have the added benefit of ring-fenced assets in addition to sponsor support and, in the UK, a pension protection scheme to give further protection to the employee against the risk of the employer's insolvency. In that sense, members of UK IORPs are better protected than members of book reserve schemes. Any justification for excluding book reserve schemes from prudential regulation must apply equally or more clearly to such UK IORPs. They should therefore be carved out from the new proposals to the same extent as book reserve arrangement because security	

			for such arrangements is already well covered by domestic and EU legislation (and is in fact better than for book reserve schemes).	
650.	UNI Europa	10.	In the view of participants of IORP pension schemes there is no need to extend or adjust existing regulation on cross-border activities of IORPs.	Noted
651.	Universities Superannuation Scheme (USS),	10.	PRUDENTIAL REGLATION AND SOCIAL AND LABOUR LAW Do stakeholders agree with the analysis of the options as laid out in this advice, including the preference for option 2?	
652.	Verbond van Verzekeraars	10.	Yes, we agree with option 2.	Noted
653.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefore contrary to the goals the European Commission wants to achieve.	Noted
654.	Whitbread Group PLC	10.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
655.	Zusatzversorgungskasse des Baugewerbes AG	10.	12. We agree.	Noted
656.	Towers Watson	10.	11. CfA 4 Prudential regulation and social and labour law Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2? Yes we agree EIOPA's broad analysis. However, the proposal to define prudential regulation is likely to have an indirect	Noted

			limitation on Member States' competence over Social and Labour Law (SLL). We wonder whether Member States might have underestimated or not fully considered this effect. If, as is acknowledged, Member States choose to determine certain 'prudential matters' as SLL, the change envisaged will have been futile and may lead to greater confusion than exists currently. We do not believe that the options considered would be of sufficient benefit to make them worthwhile and consider that instead, despite the inherent difficulties, endeavours should be made to define SLL. To achieve this, we would support an approach such as that identified in the University of Leuven's 2006 paper "The development of a legal matrix on the meaning of "national social and labour legislation" in directive 2003/41/EC with regard to five member states". Within this paper, the author suggests (paragraph 482) an "Objective approach", defining this as follows "The objective approach looks at common grounds for the notion of "social and labour law" with respect to occupational pensions. In the objective approach there is a combination of: ☐ developed national matrices filled in by the Member States using the same criteria; ☐ a common ground of six pillars on the basis of which it is possible to analyse the different national matrices. This combination allows a comparative analysis of the notion "social and labour law" that is separate from the national qualification in the subjective approach. Ultimately the development of a common social policy for occupational	

			pensions can be envisaged in this way."	
657.	OPSG (EIOPA Occupational Pensions Stakeholder Group)	11.	See question 10	
658.	AbA Arbeitsgemeinschaft für betriebliche Altersver	11.	There are many reasons (see 5.3.3, 5.3.4, 5.3.5 and 5.3.5 in the context of the Definition of cross border activity) for the limited role of cross border schemes. However, we believe that a clearer scope of prudential regulation as administered by the Home member state for the purposes of cross-border activity may be reasonable.	Noted
659.	ABVAKABO FNV	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	Noted
660.	AEIP	11.	AEIP shares the impact analysis of EIOPA.	Noted
662.	AMONIS OFP	11.	How would you assess the impact of option 2? The AMONIS OFP agrees with the impact assessment made by EIOPA, especially with the concern that some Authorities / Member States might question the validity of the Directive in this respect. AMONIS OFP is also concerned about issues not being governed by one of the prudential law provisions, nor by the applicable social and labour law provisions. To avoid this, AMONIS OFP proposes to insert a default rule in the Directive.	Noted
663.	ANIA – Association of	11.	The ANIA believes that the impact assessment is correct. The boundaries between social and labour law and prudential	Noted

	Italian Insurers		regulation are very vague. However, it should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	
664.	Association of British Insurers	11.	The ABI believes the impact assessment is correct; however we do note that the implementation of Option 2 will only result in overall benefits slightly exceeding associated costs and therefore question the overall value of the changes	Noted
665.	Assoprevidenza	11.	We agree with the impact analysis of EIOPA	Noted
666.	Assuralia	11.	How would you assess the impact of option 2? The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.	
667.	Belgian Association of Pension Institutions (BVPI-	11.	How would you assess the impact of option 2? The BVPI-ABIP agrees with the impact assessment made by EIOPA, especially with the concern that some Authorities / Member States might question the validity of the Directive in this respect. BVPI-ABIP is also concerned about issues not being governed by one of the prudential law provisions, nor by the applicable social and labour law provisions. To avoid this, BVPI-ABIP proposes to insert a default clause in the Directive.	Noted
668.	BT Pension Scheme Management Ltd	11.	We do not believe we have sufficient information to understand what the impact of Option 2 might be. As discussed above in response to Question 10, we have significant concerns that Option 2 might generate significant gaps between a generic	Noted

			supervisory regime and the specific needs of local social and labour laws. We therefore believe that this approach should be avoided.	
669.	CEA	11.	The CEA believes that the impact assessment is correct. The boundaries between social and labour law and prudential regulation are very vague. However, it should be made clear that the relationship between the employer and the employee is subject to the social and labour law, whereas prudential regulation in this context should regulate IORPs.	Noted
670.	Chris Barnard	11.	I believe that this will clarify the distribution of competences between the Home and Host supervisors. However, I do not think that this (alone) will have a very positive impact on the volume of cross-border activities. See also my response to question 5.	Noted
671.	CMHF (Centrale van Middelbare en Hogere Functionarissen)	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	Noted
672.	De Unie (Vakorganisatie voor werk, inkomen en loop	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well,	Noted

			if this is part of the Social and Labour Law.	
673.	Derek Scott of D&L Scott	11.	Quick fixes should be resisted. The flexibility of option 1 should be respected.	Noted
674.	European Federation for Retirement Provision (EFRP)	11.	EFRP broadly agrees with the impact that EIOPA foresees. The EFRP would warn against the creation of an unregulated area of rules, which fall neither within the sphere of prudential regulation nor of Social and Labour Law. The EFRP reiterates its stance that prudential regulation and Social and Labour Law should mutually exclude eachother and that there should not be a tertium genus of regulation. It should be recognised that, while option 2 would reduce the number of possible conflicts between supervisors, it cannot pre-empt all possible conflict situations in the future. As stated in the response to the first consultation, the EFRP would propose a broad, inexhaustive definition of prudential regulation, which would include the sets of rules that regulate the production and delivery of pension benefits, i.e. the establishment, functioning and the winding-up of the entities that deliver benefits. Social and Labour Law would be seen as the rules that arrange or ensure that the pension promise or employment benefit is likely to be delivered. The EFRP would call on EIOPA to closely associate the Member States to the elaboration of any definitions or descriptions. Setting security levels is part of Social and Labour Law, since it	Noted

			is a trade-off between the benefit level, security, adequacy and affordability of pensions. It would add that it would not be useful to set hard definitions in this area now, as they would risk setting the debate in stone for years to come, while Social and Labour Law and prudential regulation continue evolving.	
675.	Federation of the Dutch Pension Funds	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	Noted
676.	Financial Reporting Council	11.	We have not considered this question.	
677.	FNV Bondgenoten	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	Noted
678.	PMT-PME-MnServices	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home	Noted

			member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	
679.	Institute and Faculty of Actuaries (UK)	11.	We do not believe the issues are sufficiently clear at this stage to enable us to compile a meaningful response. We would hope EIOPA can reconsult on this question in the future once a further level of detail is available.	Noted
680.	Mercer	11.	We would not expect an adverse impact on any stakeholders as a result of explicitly determining the scope of prudential regulation in the manner recommended. We would expect the adoption of option 2 to bring an increased level of certainty to all stakeholders in the context of cross border activity, which could encourage an increased level of market activity in this area (while recognising that the lack of certainty on prudential regulation and social and labour law is only one, and not the most important, of the current barriers to the adoption of cross border arrangements).	Noted
681.	MHP (Vakcentrale voor Middengroepen en Hoger Personeel)	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well,	Noted

			if this is part of the Social and Labour Law.	
682.	National Association of Pension Funds (NAPF)	11.	How would you assess the impact of option 2? In the interests of evidence-based policy-making, EIOPA should ask the EC to demonstrate that there is a demand or need for a change in the law in this area. EIOPA should also press the EC to show how a change in the law would strengthen cross-border pension provision.	Noted
683.	Pan-European Insurance Forum (PEIF)	11.	Option 2, clarification, is sensible and it would help cross-border activity. The method of clarification is important and Member States should be encouraged to identify their social and labour law rules in a legally binding way. The financial services implications of these rules should also be spelled out (see, in this context, Question 36). This would also help the home State to ensure that an IORP operating out its territory satisfies the product requirements of the host State. It would also be helpful if Member States were encouraged to identify what social and labour policy objectives are served by their rules. This need not be part of IORP II. It would encourage reflection on whether the rules really were the most effective method to achieving the objectives.	Noted
684.	Pensioenfonds Zorg en Welzijn (PFZW)	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home	Noted

			member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law.	
685.	PTK (Sweden)	11.	PTK largely agrees with EIOPA concerning the impact of option 2. Prudential regulation and SLL should mutually exclude each other. Although option 2 would reduce the number of possible conflicts between supervisors, there will always be a risk for conflict situations in the future.	Noted
686.	Railways Pension Trustee Company Limited ("RPTCL	11.	We have not considered this question.	
687.	Standard Life Plc	11.	We believe the impact assessment is correct; but the implementation of Option 2 will only result in overall benefits slightly exceeding associated costs and therefore question the overall merit in making the changes.	Noted
688.	TCO	11.	TCO largely agrees with EIOPA concerning the impact of option 2. Prudential regulation and SLL should mutually exclude each other. Although option 2 would reduce the number of possible conflicts between supervisors, there will always be a risk for conflict situations in the future.	Noted
689.	The Association of the Luxembourg Fund Industry (A	11.	See Q 10	
690.	THE SOCIETY OF PENSION CONSULTANTS	11.	We consider that there will still be likely to be dispute/disagreement between Member States as to what	Noted

			does/does not constitute social and labour law. We are not clear, beyond the Budapest Protocol for determining what can be done to resolve such differences. Whilst the Budapest Protocol might provide a means to determine disputes between supervisory authorities, we do not believe it does anything to address differences in opinion between sovereign Member States. As facilitating cross-border activity is one of the main objectives of DG MARKT, we consider it would be appropriate to consider this issue in far greater detail and therefore over a far longer period than permitted under the current rushed legislative proposal. We would think that the Commission, the Parliament and the Council of Ministers would all be keen to ensure that IORP II actually delivers the desired benefits and the current proposals would still seem to fall a long way short of this aim.	
691.	Towers Watson Deutschland GmbH	11.	It is not possible for us to comment meaningfully in the absence of any concrete proposal from EIOPA as to what the new 'article' in the Directive might look like. It will, however, be essential for the Commission to consult on any proposed new wording in order that appropriate analysis of the proposal can be made.	Noted
692.	UK Association of Pension Lawyers	11.	CfA 4 (Prudential regulation and social labour law): How would you assess the impact of option 2? We would not expect an adverse impact on any stakeholders as a result of explicitly determining the scope of prudential regulation in the manner proposed in option 2. We would expect the adoption of option 2 to bring an increased level of certainty to all stakeholders in the context of cross border activity, which could encourage an increased level of market activity in this area (while recognising that the lack of	Noted

			certainty on prudential regulation and SLL is only one, and not the most important, of the current barriers to the adoption of cross border arrangements).	
693.	Universities Superannuation Scheme (USS),	11.	How would you assess the impact of option 2?	
694.	VHP2 (Vakorganisatie voor middelbaar en hoger personeel in de technologische sector)	11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to Social and Labour Law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the Social and Labour Law.	Noted
695.	Whitbread Group PLC	11.	We see no reason for change to the current regulatory regime for UK pension schemes, which provides strong protection for member's pension benefits	Noted
696.	Zusatzversorgungskasse des Baugewerbes AG	11.	We believe the impact analysis of EIOPA to be complete.	Noted
697.	Towers Watson	11.	12. How would you assess the impact of option 2? It is impossible for us to comment meaningfully in the absence of any solid proposal from EIOPA as to what the new 'article' in the Directive might look like. It will, therefore, be essential for the Commission to consult on any proposed new wording in order that appropriate analysis of the proposal can be made. If the Commission does not, there is a significant risk that potential problems will not be identified during the co-decision process. Again, as mentioned in earlier	Noted

			responses, such 'unforeseen' problems are likely to further frustrate the development of cross-border arrangements.	