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IORP Trilogue – Position paper

DUFAS calls on the co-legislators to build the trilogue outcome largely on the Council's general approach, combined with the Parliament's text on investment rules and the depositary. Together, these elements deliver a framework that is proportionate, respects collective national pension systems and allows pension funds to invest for the long term.

The Council adopted its negotiating mandate on 26 June 2026 and the ECON Committee adopted the Parliament's mandate on 10 November 2026. Both institutions have already improved the Commission proposal on several points that serve the wider ambition of the package: broadening pension coverage and contributing to the Savings and Investments Union. For each topic, this paper sets out which text is more workable for the sector and better supports these ambitions.

This paper builds on the position paper on the Supplementary Pensions Package that DUFAS published January 2026 in response to the Commission proposal.

23 November 2026

Topic	Commission	Council	Parliament	DUFAS preference
Investment rules (Art. 19)	Prudent person principle (PPP) clarified; national rules only for DC schemes; 70% floor for listed shares and bonds	Restores national quantitative limits; 100% floor (40% for guaranteed schemes); derogation route (6a)	No explicit quantitative rules; deletes "predominantly regulated markets"; ELTIF/EuVECA/long-term equity funds explicitly protected	**Parliament**
Cost transparency (Art. 39)	12-month and compounded cost breakdown; impact on final capital; in money and as % of contributions	12-month breakdown only, only where members bear costs; no compounded figure, no % of contributions	Keeps the Commission approach; adds costs to tracking systems; "simple and understandable" presentation	**Council**
Supervisory benchmarks (Art. 41a)	Benchmarks set by the supervisor; members informed after 3 years	Deleted	Deleted	**Both**
Underperformance (Art. 44a, 39, 44c–d)	Via Art. 41a	No separate rules	Notice to DC members, Pension Benefit Statement (PBS) explanation, complaints and ADR route, all measured against the fund's own objectives	**Council**
Duty of care (Art. 44a)	Best interests of members	Best interests of members "as a whole"; lighter wording	Adds "cost-efficient net returns", review of buffers, underperformance notice	**Council**
Appropriateness (Art. 44b)	Scheme appropriate, regularly reviewed	Deleted	Expanded (cost justification, documentation, decumulation option), with social-partner carve-outs	**Council**
Depositary (Art. 33)	Mandatory for schemes where members bear the full investment risk	Mandatory, but existing equivalent measures may be kept; flexibility on number of depositaries	Member State option ("may require")	**Parliament**
Sustainability preferences (Art. 19(1c)–(1d))	Investment decisions reflect individual	Deleted	Kept, without definition; gauged via surveys or governance bodies	**Council**

Topic	Commission	Council	Parliament	DUFAS preference
	preferences, defined via SFDR/MiFID			
Stress testing (Art. 18a)	EU-prescribed shocks every 3 years; convergence plan for any scenario	National scenarios; convergence plan only on baseline failure	EU shocks kept plus extra risks; every 5 years; proportionality	**Council**

Investment rules and the prudent person principle (Art. 19)

DUFAS preference: Parliament. The Parliament's text stays closest to the Commission's principles-based prudent person principle, which DUFAS strongly supports. It also removes remaining obstacles to long-term and illiquid investment.

Why the Parliament text

- It does not reinstate national quantitative limits. Any more detailed national rules must be "necessary, proportionate and prudentially justified" (Art. 19(6)).
- It deletes the requirement that assets be invested "predominantly" on regulated markets, MTFs or OTFs (Art. 19(1)(d)). That rule implicitly treats private markets as a deviation, even though infrastructure, real estate and private equity are core parts of a well-diversified long-term portfolio.
- It explicitly protects investment in ELTIFs, EuVECAs, EuSEFs and comparable long-term equity funds (Art. 19(6)(da)). It also requires that the prudential treatment of an asset class reflect its actual risk characteristics (Art. 19(4)).
- It anchors investment in the "best long-term interests of members and beneficiaries as a whole", taking into account life-cycle and age-differentiated risk profiles (Art. 19(1)(a)). This is in line with how Dutch funds manage collective DC schemes.

Risks of the Council text

- Restoring national discretion over quantitative investment limits (Art. 19(6)) undoes the core of the Commission's clarification. It perpetuates fragmentation across the single market, and it lets the "prudence" of growth assets be judged by fixed caps rather than by the risk management of the fund.
- Keeping the "predominantly regulated markets" test (Art. 19(1)(d)) keeps a structural bias against private markets. This runs counter to the Savings and Investments Union objective of channelling pension capital into the European economy.
- The Council does contain useful elements: a 100% floor for listed shares and bonds, at least 20% for long-term illiquid instruments in DC schemes, and a derogation route where the prudent person principle requires it (Art. 19(6a)).

Point of attention in the Parliament text

- Art. 19(1)(a) refers to "cost-efficient long-term returns". Cost efficiency should not become a stand-alone investment criterion that steers funds towards the cheapest rather than the best risk-adjusted net outcome. DUFAS prefers "risk-adjusted net returns over the long term".

Acceptable compromise

- The Parliament architecture for Art. 19(6), with no explicit quantitative rules, and the deletion of Art. 19(1)(d).
- A recital stating that high allocations to equities and illiquid assets are not imprudent by default where risks are properly managed (for example through life-cycle approaches).

Cost transparency (Art. 39, 41 and 37a)

DUFAS preference: Council. The Council keeps meaningful cost disclosure. It drops the elements that cannot be produced in a way that reflects economic reality in collective, risk-sharing schemes.

Why the Council text

- Cost disclosure applies where members bear investment risk or take investment decisions, *and* bear all or part of the costs (Art. 39(1)(g)).
- It requires a 12-month breakdown of administration and investment costs, per investment option where relevant. It does not require a compounded figure since the member joined, nor a separate line for safekeeping costs.
- It does not prescribe that costs be shown as a percentage of contributions.
- It removes the EIOPA regulatory technical standards on the PBS format. The PBS can then continue to reflect national pension systems.

Risks of the Commission and Parliament texts

- Both require a breakdown of costs "on a compounded basis since the member joined" and an estimate of their impact on final capital. Both require costs to be shown in money *and* as a percentage of contributions.
- In schemes such as the Dutch, asset management costs are incurred and deducted collectively, before returns are allocated to individual pension capitals. An individual, contribution-based cost figure can only be built with artificial allocation keys. It would therefore not reflect the actual cost structure.
- Absolute cost amounts without context about long-term returns and risk sharing are easily misread as excessive. This puts pressure on funds to favour low-cost strategies over illiquid assets with higher expected net returns. That would harm member outcomes and the Savings and Investments Union objectives alike.
- The Parliament also adds 12-month cost information to national pension tracking systems (Art. 37a(2a)(e)) and to pre-enrolment information in monetary terms (Art. 41(2)(b)). The same figures would thus appear in several channels.

Acceptable compromise

- The Council text of Art. 39(1)(g), combined with the Parliament's requirement that cost and performance information be presented "in a simple and understandable manner", proportionate to what is relevant for members.

Performance monitoring and underperformance (Art. 41a, 44a, 39(1)(ja), 44c–44d)

DUFAS preference: Council. Both co-legislators have deleted the Commission's supervisory benchmarks (Art. 41a).

Why the Council text

- Benchmarks set by supervisors cannot capture scheme-specific choices: investment policy, risk appetite, sustainability preferences and the demographic profile of members. They encourage index-hugging and discourage private-market and contrarian strategies.
- Under the Council text, IORPs monitor performance against their own strategy-aligned objectives, as set out in their statement of investment policy principles (Art. 30). DUFAS supports this.

Risks of the Parliament text
The Parliament measures underperformance against the fund's own "overall performance objectives", which is an improvement on the Commission. However, it then spreads an underperformance regime across four provisions:

- a duty to inform DC members when the scheme or option "significantly and persistently" underperforms (Art. 44a(1));
- a mandatory explanation of causes and remedial measures in the PBS (Art. 39(1)(ja));
- a specific route to complaints and out-of-court redress on underperformance and on costs (Art. 44c(2a), 44d(1a));
- performance indicators among the supervisory early-warning parameters (Art. 49(1c)).

The key terms are not defined, and there is no minimum assessment horizon. Combined with a redress route, this creates legal uncertainty and an incentive to manage to short-term figures. In schemes where members cannot switch provider, an underperformance notice gives them no way to act on it. It mainly causes concern.

Acceptable compromise

- No separate underperformance notice; performance information remains part of regular PBS reporting.

Duty of care and appropriateness of pension schemes (Art. 44a–44b)

DUFAS preference: Council. The Council keeps a general duty of care, but frames it collectively ("members and beneficiaries as a whole") and in lighter terms ("appropriate measures" and "information" rather than "safeguards" and "guidance"). It also deletes the separate appropriateness requirement (Art. 44b).

Why the Council text

- A broad, open-ended duty of care on top of specific obligations on investment, governance and information risks becoming a catch-all provision. It duplicates the safeguards of the social-partner governance model.
- Boards that fear ex-post claims under a vague standard become overly cautious, especially towards infrastructure, private equity and other less liquid assets. A collective framing limits that risk.
- The Council text addresses both concerns. By framing the duty of care around the best interests of members and beneficiaries *as a whole*, it anchors the obligation at scheme level, where investment and risk decisions are actually taken in collective arrangements, rather than at the level of the individual member. By requiring “appropriate measures” and “information” rather than open-ended “safeguards” and “guidance”, it confirms that the duty of care complements, and does not override, the specific obligations on investment,

governance and member information elsewhere in the Directive. Deleting Art. 44b avoids a second, overlapping conduct standard. The result is a duty of care that strengthens member protection while preserving legal certainty for boards and their room to invest for the long term.

Risks of the Parliament text

- The duty is broadened to "risk-adjusted and cost-efficient net returns" consistent with "members' profiles" (Art. 44a(1)). This moves towards an individual suitability standard.
- IORPs must regularly assess whether their funding, risk-management and investment choices remain consistent with that objective, including where assets exceed the minimum requirements (Art. 44a(1), see also Art. 18a(3a)). This invites supervisory second-guessing of investment and buffer policy that belongs to the fund's governance bodies.
- Art. 44b is retained and expanded: an assessment of whether costs are "justified and proportionate", regular review in light of "material developments", documentation duties, and a long-term risk assessment from the member's perspective. The open terms the Commission used ("regularly review", "material changes") remain undefined.

Positive elements in the Parliament text

- Guidance obligations may be fulfilled through social partners or entities acting on their behalf (Art. 44a(2)).
- Art. 44b applies "without prejudice to national social and labour law", compulsory membership and collective agreements, and proportionately to the nature, scale and complexity of the scheme.

Acceptable compromise

- Council text of Art. 44a, with the Parliament's social-partner carve-out in Art. 44a(2).

Depositary (Art. 33)

DUFAS preference: Parliament. The Parliament turns the mandatory depositary into a Member State option: the home supervisor "may require" a depositary for schemes where members fully bear the investment risk.

Why the Parliament text

- In the Netherlands, the functions of a depositary are already covered by custody at regulated banks, external audit and supervision by DNB. A mandatory depositary would add cost without adding protection.
- A Member State option respects the diversity of national safekeeping models, while Member States that see a need, such as those with retail-like DC schemes, can still require a depositary.

Assessment of the Council text

- The Council keeps the obligation but allows Member States to maintain alternative measures that existed before entry into force and ensure "a comparable level of protection". It also confirms that one depositary may serve several schemes and that a scheme may appoint more than one depositary. This is a workable fallback.

- Two weaknesses: the text does not say who assesses "comparable protection", and the carve-out is frozen at measures existing before entry into force. That blocks future improvements to national safekeeping arrangements.

Acceptable compromise

- The Parliament's Member State option.

Sustainability (Art. 19(1)(b), 19(1c)–(1d), 21)

DUFAS preference: Council. All three texts require IORPs to take sustainability risks and impacts into account. The difference lies in whether individual sustainability preferences must be reflected in investment decisions.

Why the Council text

- The Council deletes Art. 19(1c)–(1d). IORPs keep the obligation to consider sustainability risks and the long-term impact on sustainability factors, proportionately (Art. 19(1)(b)), and to consider ESG factors in governance (Art. 21(1)).
- This leaves funds free to integrate sustainability in the way that fits a collective scheme. Dutch experience shows that eliciting individual preferences in collective arrangements is complex, and can lead to outcomes that are not fit for purpose.
- It avoids building a new IORP concept on SFDR definitions that are being revised in the SFDR review.

Assessment of the Parliament text

- The Parliament deletes the definition in Art. 19(1d), which was copied from MiFID, and the reference to the do-no-significant-harm principle. It keeps Art. 19(1c) only "where IORPs are able to gauge" preferences. IORPs decide how to gauge them, including through surveys or member participation in governance structures. This is close to the pragmatic approach DUFAS proposed.
- The Parliament also loosens the SFDR link in Art. 19(1)(b): sustainability risks and factors "may be interpreted" in line with the SFDR definitions. That is a sensible hedge against SFDR 2.0.
- Art. 19(1c) still refers to SFDR Art. 2(24), and adds a requirement to explain how preferences affect financial performance and risk. Both carry implementation and liability risk.

Acceptable compromise

- Deletion of Art. 19(1c)–(1d) (Council).

Internal stress testing (Art. 18a)

DUFAS preference: Council. The Council keeps a multi-year internal stress test for IORPs that carry biometric, investment or benefit guarantees themselves. Scenarios, parameters and the time horizon are set at national level.

Why the Council text

- Pension systems differ fundamentally in liability structure, steering mechanisms and recovery tools. Stress test design belongs with national supervisors, who know those systems.

- The consequences are differentiated. A convergence plan is required only if the baseline scenario fails; adverse scenarios trigger a demonstration of mitigating measures. This prevents a single EU stress scenario from driving investment policy towards de-risking.

Risks of the Parliament text

- The Parliament keeps the Commission's fixed EU-level shocks in Level 1: a 40% interest-rate decline, a 30% fall in returns and 10% lower mortality. It adds further scenarios (climate, geopolitical, cyber, asset bubbles). Uniform shocks hard-coded in the directive do not fit diverse national frameworks, and cannot be updated without a legislative change.

Acceptable compromise

- The Council architecture (national scenarios, convergence plan only on baseline failure), combined with the Parliament's five-year frequency, proportionality clause and exemption for risks covered by the sponsor or a third party.

DUFAS: Dutch Fund and Asset Management Association

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS stands for the social importance of investing, developing industry standards and representing asset managers in new government plans. Equal regulations within one European market and strengthening the (European) capital market are leading in this regard.

More information

Would you like to respond, or should you have any questions? We would be pleased to hear from you. Please feel welcome to e-mail Marlon Jansen, DUFAS Head of EU Affairs and Communications, at mj@dufas.nl.