Comments Template on Consultation Paper on Further Work on Solvency of IORPs		Deadline 13 January 2015 23:59 CET
Name of Company:	Association of Pension Lawyers	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment/response in the relevant row. If you have no response to a question, keep the row empty. ⇨ Our IT tool does not allow processing of comments/responses which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-14-040@eiopa.europa.eu . Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to **Consultation Paper on Further Work on Solvency of IORPs**.	
Reference	**Comment**	
General Comment	**General introduction** 1. This document sets out the comments of the Association of Pension Lawyers of the United Kingdom (the **"APL"**). The APL represents members of the UK legal profession with a particular interest in pensions. Currently it has approximately 1200 members. Our members include most, if not all, of the leading practitioners in the UK in this field. This response is submitted by the International Sub-	

Committee of the APL.

2. Unlike Pension Funds established in some countries, Pension Funds established in the UK are not regulatory own funds for the purposes of Article 17 of the IORP Directive (Directive 2003/41/EC). Pension Funds in the UK are normally established under trust. This means that they act through their trustees and the Pension Fund does not have a separate legal personality, in contrast to a foundation or stichting which may be used in Belgium or the Netherlands.

General comments

3. The original purpose of the holistic balance sheet (**"HBS"**) was to consider whether a single prudential regime could be applied to IORPs across Europe. This goal was said to be necessary in order to encourage cross-border activity amongst IORPs by providing regulatory consistency.

4. We note that the Commission has decided not to pursue solvency provisions within the draft IORP II directive and so there is currently no clear purpose for the HBS regime to fulfil. EIOPA states in the consultation paper that it does not intend to pre-empt any decisions on the possible uses of the HBS. So the situation we currently have is one where EIOPA ("on its own initiative") is seeking to develop a complex model with no clear idea of what it is going to be used for or how it is going to be used. For example, in paragraph 4.117 of the consultation, EIOPA states that "it is unclear how such a holistic balance sheet which never balances would be used in practice by IORPs and supervisers". Clearly, in the context of that comment, one can only decide what approach

	should be taken if one knows the purpose for which it is going to be used. 5. If one imagines for a moment that the Commission decides in the future to resurrect the HBS proposal for the originally stated purpose of a European-wide prudential regime to encourage cross-border activity, then presumably the HBS regime should only apply to IORPs that wish to undertake cross-border activity. The vast majority of UK IORPs which provide defined benefits are highly unlikely to be used for cross-border purposes even if a European-wide prudential regime were to be introduced because such activity simply would not fit with what the IORP is used for. 6. The majority of UK IORPs are not major financial institutions providing benefits for employees across an entire industry; most are established for use by a single employer or a single corporate group. They are simply not of the same genre as, say, many Dutch IORPs which, because they are not "owned" by a single employer/group, have a much greater degree of independence and autonomy from their sponsors than UK IORPs. While UK IORPs do, of course, have independent trustee boards, those boards can rarely act without input from their sponsors on significant financial matters such as funding and investment. The reason for this is because so much of the IORP's future is tied to the sponsor's future. 7. For IORPs where there is no intention for it to be operated on a cross-border basis, one might question why there is a need for a European-wide prudential regime to be applied. Perhaps there is a much stronger argument in favour of national regulators being left to regulate such IORPs as those national regulators	

	see fit.	
Q1	No. Rights under UK trust-based IORPs may stem from a contract (namely, the contract of employment) but they are defined by a mix of contract law, trust law, employment legislation and pensions legislation.	
Q2	No. This appears to be an arbitrary term taken from an entirely separate regulatory framework and consequently it has no relevance to IORPs.	
Q3	UK IORPs tend to categorise liabilities into "accrued rights" and "prospective rights". We assume the HBS should only recognise accrued obligations.	
Q4	This section does not appear to recognise that, while a UK IORP may not have a unilateral power to terminate the accrual of benefits, the sponsor of the IORP may well have this power. We assume that, even if the power is held by the sponsor rather than by the IORP, the existence of the power should be recognised in the HBS.	
Q5	We suggest that, in relation to UK IORPs, the assumption should be made that it is always possible for a party, other than the relevant employees, to terminate the accrual of further benefits under the IORP unilaterally. This should be recognised by the HBS only taking into account accrued rights.	
Q6	1. Broadly speaking, yes we agree with the overview. It is also possible for additional liabilities to arise through legislative change. Normally these would	

	relate to the valuation of liabilities (which is covered elsewhere in the consultation document). However, in some circumstances it can affect liabilities themselves. 2. One example is in association with legislation on civil partnership, where additional liabilities in respect of civil partners (a new category of relationship) arose for schemes, as schemes were obliged to provide dependants' benefits for civil partners in line with those provided for members' spouses, with retrospection in respect of accruals from December 2005.	
Q7	1. A distinction between incoming cash-flows as "regular contributions" and sponsor support would be difficult to achieve in practice for the following reasons. Currently, for the purposes of the funding regime, UK defined benefit occupational pension schemes have to take into account risks across the key strands of covenant, funding and investment, with emphasis on how the strands interact, so that risks can be rebalanced where necessary. The employer covenant therefore forms part of the funding regime and is taken into account when determining the approach to calculating and financing the scheme's technical provisions. 2. It would be very difficult to place a value on which the employer's covenant is available to the scheme managers. This will be, at best, an extremely complex exercise. Even in the simple case where there is a single sponsoring employer, the employer's "spare capital" is likely to have prior calls on it, some contractually constrained and others tied to the needs of shareholders and internal business plans. There are more complications in the case of schemes with more than one	

	sponsoring employer. 3. Also, quite reasonably, there is a requirement for asset valuations to be "market consistent". In the case of employer covenant, there is no market, so the best to hope for is "mark to model" but corporate finance models are generally not transparent and incorporate many subjective elements. For example, in some cases, it might be possible to use bond spreads or the costs of credit default spreads to form the basis of a model but these only reflect the specific bond holder's positions, which will be very different from that of the IORP. 4. Treating sponsor support differently also raises the question of whether disposal of assets by sponsors would be restricted. 5. In should also be kept in mind that most contributions being paid into UK IORPs are now purely being made in order to improve funding levels, not because any further benefits are being accrued. Added to which, these contributions will vary depending on the financial strength of the sponsor and its ability to fund the IORP.	
Q8	1. We think that a distinction would be difficult to achieve in practice. 2. We are also confused by the reference in the question to regular contributions being recognised in technical provisions. We assume that technical provisions has the same meaning here as it does in the IORP Directive, in which case an IORP's technical provisions are its liabilities – i.e. the expected future cash-flow	

	out of the IORP to its beneficiaries. Regular contributions are presumably an asset, not a liability, and so have no place in the technical provision calculation.	
Q9	1. We are confused by the reference in the question to surplus being recognised in technical provisions. We assume that technical provisions has the same meaning here as it does in the IORP Directive, in which case an IORP's technical provisions are its liabilities – i.e. the expected future cash-flow out of the IORP to its beneficiaries. Surplus is presumably an asset, not a liability, and so has no place in the technical provision calculation. 2. "Surplus" is not defined. In the UK, only funds in excess of full solvency could be refunded to sponsors if that is permitted by the rules of the IORP and specific regulatory conditions are met. This only occurs very rarely. If a payment of "surplus" was made, the amount of the payment would not be included in the assets of the IORP for funding (technical provisions) purposes. 3. Where such a payment is simply a theoretical possibility (this is normally the case in the UK), we do not believe it should be explicitly recognised. It may be possible to reflect it in the overall assessment of sponsor support, but it is difficult to see how it would be "valued".	
Q10	1. Yes, one example is in association with legislation on civil partnership, where additional liabilities in respect of civil partners (a new category of relationship) arose for schemes, as schemes were obliged to provide dependants' benefits for civil partners in line with those provided for members' spouses, with retrospection	

	in respect of accruals from December 2005. 2. Other examples include IORPs which do not require contributions to be made by employees in order for them to accrue benefits and also death benefits provided by IORPs.	
Q11	We believe that it would be preferable for contract boundaries to be defined based on unconditional future benefits payments rather than contribution or premiums. It seems that the sensible starting point for any HBS would be to value the IORP's liabilities and then compare those liabilities to its assets. It would seem wrong to start by judging the HBS by reference to contributions which in many cases will have no relevance to benefits provided by the IORP.	
Q12	1. We agree that future accruals only have to recognised (and covered by the technical provisions) if the IORP is locked in to providing the benefits. In terms of most UK defined benefits schemes this will mean future accrual is excluded from scope, as the rules will normally be flexible enough to allow for the scheme to be closed at any time. However, it should be noted that it is not normally the IORP (scheme manager) that has the power (or unilateral power) to close the scheme, but the sponsor, so this distinction will need to be addressed. 2. It seems that the sensible starting point for any HBS would be to value the IORP's liabilities and then compare those liabilities to its assets. It would seem wrong to start by judging the HBS by reference to contributions which in many cases will have no relevance to benefits provided by the IORP. The IORP Directive refers to the concept of technical provisions and it would seem sensible	

	to use the same concept for any HBS that might be developed.	
Q13	For most (private sector) UK schemes only accrued benefits will be "in scope" as the basis for the technical reserves to be valued. However, unconditional elements attached to these accrued benefits will be "in scope" (although how to value these elements will be a matter for discussion).	
Q14	1. We recognise that in relation to insurance contracts there may be a degree of correlation between the premium paid and the likely benefits underwritten. We note that, therefore, there is arguably as per para 4.16 "a close relation between certain obligations/provision of cover on the one hand and paid premiums on the other hand". 2. We also recognise that a basic idea within para 4.26 is that regulation should relate to the "risks building up on the IORP". In this regard, we note para 4.27 that, "If cash-flow should be paid by the IORP as part of the promise made to members and beneficiaries they should be recognised in technical provisions of the IORP, because only so can they be taken into account and thus protected by a supervisory regime". 3. In respect of pension plans provided by insurance contracts, whilst there can be a degree of correlation between premium paid and benefits provided it is not necessarily a linear correlation, as there can be substantive differences in this inter-relationship including by virtue of the different profit margins of the insurers, the assumptions and also the different benefit structures from contracts. Accordingly, even in the case of insurance contract based pensions provision the	

amount of premium paid may not be a wholly accurate predictor of the risk that has been building up in relation to the IORP.

4. In respect of non-insurance contracts where the pension provision is supported by a scheme sponsor, the correlation between contributions and benefits may be much weaker. We believe the level of contributions is not necessarily a reliable predictive indicator in respect of such schemes. Reasons for this lack of correlation may include:

   a) Sponsored pension schemes with the same levels of benefit may have different levels of contribution agreed within their deed and rules.

   b) Having regard to the scheme specific nature of scheme funding legislation, there may be a broad range of differing contribution levels even in respect of the same or similar level of benefits from IORP to IORP.

   c) The prospect of varying contribution levels has always been available under the scheme specific funding regime in the UK which, under the previous code of practice, provided for contributions to have regard to each sponsor's reasonable economy.

   d) Under the current regulatory code, which has regard to sponsor investment and growth, differing levels of contribution may be a reflection on the specific capital expenditure or other commercial circumstances of the sponsor rather than any indication of the particular benefit levels within the

	IORP in question. 5. For the reasons above, assessment of technical provisions will more accurately be determined by reference to the benefits accrued in the case of scheme sponsored IORPs rather than by contributions. For this reason, we would not recommend the approach suggested in para 4.46A to apply to scheme sponsored IORPs. 6. In addition we note that as mentioned in para 4.47 it can commonly be the case that it is not the IORP which has a unilateral right to terminate the agreement to provide pension benefits. There may be occasions where an IORP sponsor would on the face of the IORP's governing documentation be able to terminate its agreement, whilst this may also be subject to overriding legislation. 7. Even where an IORP has the power to terminate contributions or the pension agreement it may commonly not wish to do so or be able to do so effectively, as it is possible that such an exercise would be inconsistent with the IORP's fiduciary duties. Accordingly, the existence of the rights of an IORP to terminate an agreement or contributions may not indicate the likelihood of that right being exercised. 8. Additionally, in any case where a sponsor has the right to cease making contributions, to the extent that such contributions relate to deficit contributions the right would have to be considered in the context of the relevant statutory provisions. Such provisions including, for example, the UK scheme specific funding regime, which may often require continuing payments to the pension	

	scheme.	
Q15	1. For the reasons set out above we do not believe that the level of contributions paid by a sponsor necessarily determines the extent of the benefits provided by the IORP in question. Accordingly, we believe that there are material prospects of such an approach giving rise to unpredicted higher or lower cash flows for the IORP in question. 2. It seems that the sensible starting point for any HBS would be to value the IORP's liabilities and then compare those liabilities to its assets. It would seem wrong to start by judging the HBS by reference to contributions which in many cases will have no relevance to benefits provided by the IORP. The IORP Directive refers to the concept of technical provisions and it would seem sensible to use the same concept for any HBS that might be developed.	
Q16	For the reasons set out above we do not believe that the level of contributions paid by a sponsor necessarily determines the extent of the benefits provided by the IORP in question. Accordingly, we believe that there are material prospects of such an approach giving rise to unpredicted higher or lower cash flows for the IORP in question.	
Q17	The application of a contribution-based test in respect of insurance contracts does not necessarily translate appropriately to scheme sponsored IORPs.	

Q18	No in respect of scheme sponsored IORPS for the reasons provided.	
Q19	We believe it may be helpful to include prospective beneficiaries within the definition of beneficiaries.	
Q20	For the reasons mentioned, whilst there are grounds for contributions to be a predictive element of benefits in respect of insurance contracts (albeit not wholly predictive) we do not believe that they are sufficiently predictive or appropriate in the case of scheme sponsored IORPS.	
Q21	We do not believe that this distinction between para 4.46(a) and para 4.46(b) would be of assistance in the case of scheme sponsored IORPS.	
Q22	The level of contributions is not in our view a predictive element in respect of sponsored IORPS and accordingly we believe that the termination of such contributions is not a relevant factor.	
Q23	Whilst we believe that the examples provided at paras 4.50 to 4.57 broadly represent the provisions of that section, we do not believe that the distinction between para 4.46(a) and para 4.46(b) is an appropriate distinction in respect of sponsored IORPS.	
Q24	1. In general, we are unclear as to what definitions EIOPA are asking us to consider. We recognise the broad principle identified, that there are three categories of	

	decision making processes: a) pure discretionary benefits, b) pure conditional benefits, c) benefits which display some of the characteristics of both (mixed benefits). 2. We agree that pure conditional benefits do not have a discretionary element, whilst any benefit which has a discretionary element will require some element of art rather than science in assessing future value if they are to be accounted for under the HBS. 3. However we do not believe that the existing descriptions are sufficiently clear for us to provide useful feedback. As an example we are not sure if a death in service lump sum is intended to fall within these definitions. This is usually a pure discretionary benefit within the potential beneficiary class payable on the death of a member and can either be insured, or be paid from the funds of the IORP with the employer making an appropriate contribution to cover the cost. 4. The definitions set out here could cause it to be classified as a mixed benefit as there are conditions attached to the payment (for example, a member must have died, and the benefits can only be paid to a specified class of beneficiary) and we	

	do not think if this is appropriate. 5. We believe that the definitions that the paper suggests need some more work to see where various benefits would fall, and how this would affect the HBS. We will address the question of valuation in the next section. 6. Once this has been done the definitions will need to be finessed for the reality of IORP provisions in the member states, and preferably clearer definitions put in place.	
Q25	1. We do not agree that the funding status of the IORP is necessarily a strong determinative factor for all discretionary benefits. In our experience a number of 'discretionary' benefits are payable whatever the funding of the IORP at the time. 2. We believe that EIOPA may be attempting to address a more limited set of discretionary benefits under this section than it might appear at first glance. If so, this needs to be clarified by EIOPA.	
Q26	1. Some discretionary benefits are not related to funding and this needs to be recognised. 2. The actuarial profession in the UK is already involved in the valuation of discretionary benefits and have guidance on how payment 'patterns' should be dealt with during such valuations. We suspect there will be similar mechanisms in	

	place across other member states. 3. These existing mechanisms should be considered by EIOPA to avoid the risk of reinventing the wheel, or indeed missing out on the practical experience of the actuarial profession in this area.	
Q27	1. This is a good example of where it is difficult to provide a meaningful response without knowing the purpose of the HBS. Although some IORPs may pre-fund pure discretionary benefits on a voluntary basis, the sponsor may not wish this to be disclosed to members in case it creates certain expectations which can then become legal obligations. 2. We believe that the starting point is for EIOPA to provide a clearer definition of 'best estimate' as this can mean different things to different parties. We envisage difficulties in providing best estimates of pure discretionary benefits. We also note that under UK law it may possible for a purely discretionary benefit to be converted into a conditional benefit through a specific set of promises. 3. We agree that pure discretionary benefits should not be considered as part of the Pillar 1 balance sheet as these do not form part of the pension promise.	
Q28	The description provided of mixed benefits is not clear, and is widely defined. Further work is needed to clarify the definitions with real world examples to allow us to consider the breaks between the three classes of decision making in the context of	

	the UK IORP system.	
Q29	Clarification is needed on "best estimate". Non-legally enforceable sponsor support is an important factor for the security of IORPs. This is an area that IORPs are already familiar with as it forms part of the scheme valuation cycle and on-going monitoring. There are a number of factors that will need to be taken into account when valuing such support, for example, the sponsor's financial position, sector, market position, industry pressures and so on. These factors would be relevant in any modelling exercise. It is important to note that the value placed on non-legally enforceable sponsor support can vary considerably between IORPs and if some form of "best estimate" is to be produced for the HBS then this will require IORPs to take advice from covenant assessors.	
Q30	1. We are not entirely clear what these off-balance capital instruments would be in the context of UK IORPs. 2. Due to the wide variety of off-balance capital instruments we do not necessarily believe that a 'one size fits all' approach can be taken to valuation. In practical terms valuation on one basis could be appropriate for one type of instrument, whilst another type of valuation would give a better indication of likely recovery of another due to its structure or legal framework. 3. Attempting to bring together such a large class of instruments within a single valuation mechanism does not appear to us to be appropriate.	

Q31	Neither option appears appropriate due to lack of clarity.	
Q32	Yes.	
Q33	We are unsure how this reference to subordinated loans is of relevance to IORPs bearing in mind Article 18(2) of the IORP Directive which provides that: "*The home Member State shall prohibit the institution from borrowing or acting as a guarantor on behalf of third parties. However, Member States may authorise institutions to carry out some borrowing only for liquidity purposes and on a temporary basis.*"	
Q34		
Q35	1. This is another example of where it is difficult to provide a meaningful response without knowing the purpose for which the HBS will be used. 2. It does however appear that the more natural way of dealing with benefit reduction mechanisms is for them to be a balancing item rather than having to be given their own value.	
Q36	1. We essentially welcome this, in that it seems EIOPA has recognised that	

substantive decisions on sponsor support may actually need to be taken by member states. We regard this as a positive step.

2. Paragraphs 4.110 and 4.111 contain the key statements e.g.

> "*EIOPA recognises that it may not be possible to devise a one-size-fits-all methodology to the valuation of sponsor support. The position of sponsors can vary significantly and the appropriate approach for one type of sponsor may not be appropriate for another…EIOPA therefore supports an EU wide principle based approach to the valuation of sponsor support. The overarching principle being put forward is that contained in EIOPA's advice that the valuation of sponsor support should be market consistent. The specifics of the calculation should then be left to member states/national supervisory authorities and/or IORPs to implement as appropriate specific to their own circumstances.*"

3. However, it also seems that not all regulation is to be left to member states, with the introduction of "probabilistic" and "deterministic" modelling principles where the criteria for the "proportionality principle" is not met (if it is met, IORPs are released from the requirement to see whether the HBS balances).

4. We would be keen to understand exactly what those modelling principles are and when they would be engaged (essentially more detail on the proportionality thresholds) before coming to a view as to whether they are viable from a UK perspective.

Q37	It is not altogether clear what this will mean in practice. Will any "market consistency" take into account the diverse nature of UK DB IORPs and be bespoke enough?	
Q38	Our initial view on this is that while this seems like a logical idea – it's not a million miles from the UK Pension Regulator's current blend of risk management in terms of protecting members benefits while balancing this against the new sponsor sustainable growth principle – we are concerned about how any more structured requirements would actually be implemented, and at what cost (vs benefit).	
Q39	We are of the view that sponsor support should be a balancing item.	
Q40	1. Interestingly, here is the potential carve-out of full HBS compliance where a pension protection scheme exists. On the face of it this would seem sensible to explore from a UK perspective given that the other suggested conditions of proportionality, namely: a) Sponsor support as the balancing item depending on the default rate of the sponsor; and b) Sponsor support as the balancing item depending on the strength of the sponsor;	

	are in effect considered by the UK's Pension Protection Fund in establishing levy payments. 2. Compare this with paras 5.46 onwards which look to the possibility of excluding recognition of pension protection schemes from the HBS. 3. It would seem that, depending on the purpose of the HBS, both legally binding and non-legally binding sponsor support should be taken into account in the HBS.	
Q41		
Q42		
Q43	1. The issue of whether a pension protection scheme should be included within the HBS depends on the nature of the pension protection scheme and whether the protection is provided within the IORP or outside of it. 2. Take, for example, the UK's Pension Protection Fund ("PPF"). The PPF operates by taking over responsibility for an IORP's liabilities and as part of this process the IORP's assets are also transferred to the PPF; once this process is complete, the IORP is wound up and dissolved. In effect, therefore, it is a balancing item for such schemes.	

	3. If the PPF was capable of being used as a balancing item within an IORP's HBS, presumably all UK IORPs that are eligible for the PPF would automatically have a balanced HBS – the PPF is a statutory organisation that will never be insolvent because it can reduce the level of benefits it provides. 4. However, such an approach would presumably need to recognise the fact that some benefits are reduced as part of the transfer to the PPF. Consideration should, perhaps, be given to treating those benefits which are equivalent to the compensation provided by the PPF as fully funded at all times on the HBS so that it is only the unprotected benefits which need to be the focus of the HBS. 5. If, in theory, a pension protection scheme covered all of the guaranteed obligations of the IORP, it could be argued that the IORP's funding was irrelevant as was the strength of the sponsor's support. 6. In that situation, the appropriate approach would be for EIOPA to look at the regulation of the pension protection scheme. 7. As funded defined benefit occupational pension schemes continue to decline in terms of active members, and unfunded defined benefit schemes are outside the scope of the IORP Directive , the concept of having some common level of funded defined benefit pension schemes across the European Union so as to promote cross-border provision of pension funds appears to be rather pointless.	

Q44	1. If the pension protection scheme operates in the way that the UK Pension Protection Fund operates, namely: a) covers less than 100% of the guaranteed benefits of the IORP, b) only applies on the insolvency of the employer, and c) takes-over the assets of the IORP and provides compensatory payments which provide a lesser level of benefit than the guaranteed benefits in the IORP in relation to which the employer has become insolvent, then the concept of using the pension protection scheme as a balancing item in this situation appears to be delusional. 2. In the context of a "holistic" balance sheet, you can either count the employer covenant or you can count the pension protection scheme. 3. However, if the only circumstance in which the pension protection scheme steps in is where the employer is insolvent and recovery on the employer's insolvency is not sufficient to cover the minimum benefit covered by the pension protection scheme, the existence of the pension protection scheme is as an alternative to, and not a supplement to, the support of a level from the employer.	

Q45	1. This depends on the purpose for which the HBS will be used. We can see how a separate minium funding level would be needed in relation to Pillar 3 but not for Pillar 1. 2. If there is the hypothetical scenario under which the pension protection scheme covers 100% of the guaranteed benefits, then the funding of the IORP's guaranteed benefits and the strength of the employer support become irrelevant. 3. Instead, what becomes relevant is the financial strength of the pension protection scheme. 4. It may be that the financial strength of the pension protection scheme will be influenced by: a) the likelihood of the IORPs covered by the pension protection scheme having the benefits provided by them taken over by the pension protection scheme, b) the degree of funding of the guaranteed benefits in the IORP, and c) the amount of recovery from the sponsoring employer group in the context of the sponsoring group's insolvency.	

	5. However, so far as we are aware, no such pension protection scheme exists. Nor would it seem likely that any such pension protection scheme would come into existence.	
Q46	1. If it became a legal requirement for a Member State to adopt some type of methodology in respect of funding of IORPs over and beyond that required by the IORP Directive, then the least worst approach would be to adopt a principles based approach. 2. The reason for this is that a principles based approach provides for a more proportionate approach to the way in which guaranteed benefits in IORPs are to be funded and reflects the differing legal and social contexts within which retirement provision is made within different Member States in the European Union. 3. In this context, it may be noted that the fact that: a) a particular EU Member State (e.g. the UK) has a large funded IORP degree of pension provision, while b) other EU Member States (e.g. France and Germany) have a different approach to retirement provision, which means that the IORP Directive is largely irrelevant to such a Member State,	

	further indicates the lack of proportionality of the regulatory approach. 4. To illustrate the point, it would be perfectly feasible for the UK to enact legislation to allow employers to restructure their funded occupational pension schemes so that they became book reserve schemes (thereby falling within Article 2(2)(e) of the IORP Directive (which would then render this particular consultation irrelevant)), supported by security over charged assets corresponding to the existing assets of the UK IORP.	
Q47	None	
Q48	No	
Q49	1. As to the first question, this approach is not suitable. See answer to Q46: [*1. If it became a legal requirement for a Member State to adopt some type of methodology in respect of funding of IORPs over and beyond that required by the IORP Directive, then the least worst approach would be to adopt a principles based approach.* *2. The reason for this is that a principles based approach provides for a more proportionate approach to the way in which guaranteed benefits in IORPs are to be funded and reflects the differing legal and social context*	

within which retirement provision is made within different Member States in the European Union.

3. In this context, it may be noted that the fact that:

(a) a particular EU Member State (e.g. the UK) has a large funded IORP degree of pension provision, while

(b) other EU Member States (e.g. France and Germany) have a different approach to retirement provision, which means that the IORP Directive is largely irrelevant to such a Member State,

further indicates the lack of proportionality of the regulatory approach.

4. To illustrate the point, it would be perfectly feasible for the UK to enact legislation to allow employers to restructure their funded occupational pension schemes so that they became book reserve schemes (thereby falling within Article 2(2)(e) of the IORP Directive (which would then render this particular consultation irrelevant)), supported by security over charged assets corresponding to the existing assets of the UK IORP.]

2. As to the second question, see the answer to 1. above.

	3. As to the third question: a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP. b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).	
Q50	EIOPA should not be encouraging the use of this approach. This is for the reasons stated in the answer to Question 3 in Q49 above: [*3. As to the third question:* *(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP.*	

	(b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).]	
Q51	The answers to Q49 apply equally here: [*1. As to the first question, this approach is not suitable. See answer to Q46:* *[1. If it became a legal requirement for a Member State to adopt some type of methodology in respect of funding of IORPs over and beyond that required by the IORP Directive, then the least worst approach would be to adopt a principles based approach.* *2. The reason for this is that a principles based approach provides for a more proportionate approach to the way in which guaranteed benefits in IORPs are to be funded and reflects the differing legal and social context within which retirement provision is made within different Member States in the European Union.* *3. In this context, it may be noted that the fact that:*	

(a) a particular EU Member State (e.g. the UK) has a large funded IORP degree of pension provision, while

(b) other EU Member States (e.g. France and Germany) have a different approach to retirement provision, which means that the IORP Directive is largely irrelevant to such a Member State,

further indicates the lack of proportionality of the regulatory approach.

4. To illustrate the point, it would be perfectly feasible for the UK to enact legislation to allow employers to restructure their funded occupational pension schemes so that they became book reserve schemes (thereby falling within Article 2(2)(e) of the IORP Directive (which would then render this particular consultation irrelevant)), supported by security over charged assets corresponding to the existing assets of the UK IORP.]

2. As to the second question, see the answer to 1. above.

3. As to the third question:

(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and

	the measured funding, on this basis, of the IORP. *(b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).*]	
Q52	The answer to Q50 applies equally here: [*EIOPA should not be encouraging the use of this approach. This is for the reasons stated in the answer to Question 3 in Q49 above:* *[3. As to the third question:* *(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP.* *(b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of*	

	Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).]]	
Q53	The answers to Q49 apply equally here: [*1. As to the first question, this approach is not suitable. See answer to Q46:* *[1. If it became a legal requirement for a Member State to adopt some type of methodology in respect of funding of IORPs over and beyond that required by the IORP Directive, then the least worst approach would be to adopt a principles based approach.* *2. The reason for this is that a principles based approach provides for a more proportionate approach to the way in which guaranteed benefits in IORPs are to be funded and reflects the differing legal and social context within which retirement provision is made within different Member States in the European Union.* *3. In this context, it may be noted that the fact that:* *(a) a particular EU Member State (e.g. the UK) has a large funded IORP degree of pension provision, while*	

(b) other EU Member States (e.g. France and Germany) have a different approach to retirement provision, which means that the IORP Directive is largely irrelevant to such a Member State,

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2. As to the second question, see the answer to 1. above.

3. As to the third question:

(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP.

(b) this, in turn, is likely to affect, among other things, the way in

	which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).]	
Q54	No, see the answer to Q50: [*EIOPA should not be encouraging the use of this approach. This is for the reasons stated in the answer to Question 3 in Q49 above:* *[3. As to the third question:* *(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP.* *(b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member States where the relevant central bank has engaged in substantial quantitative easing measures).]*]	

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Directive is largely irrelevant to such a Member State,

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2. As to the second question, see the answer to 1. above.

3. As to the third question:

(a) the use of a modelling approach will lead to distortions in behaviour relating to attempts to come up with a result that maximises the financial strength of the sponsoring employer and the measured funding, on this basis, of the IORP.

(b) this, in turn, is likely to affect, among other things, the way in which the assets of the IORP are invested, potentially in a pro-cyclical fashion and, potentially, in the unproductive purchase of Member State government bonds in a rigged market (for Member

	States where the relevant central bank has engaged in substantial quantitative easing measures).]	
Q56	1. A problem with this approach is that, if the future interest rate is derived from a rate which is linked to yield on government bonds of the appropriate duration, then the results of the model will be distorted where the government bond market is rigged through the use by the central bank of the Member State in question (or of the Eurozone) engaging in quantitative easing. 2. For example, the Bank of England is on record as having concluded that quantitative easing in the UK has had the effect of reducing yields for UK Government bonds with a 15-20 year maturity by 120 basis points (which, in turn, results in the liabilities of the UK pension schemes being over-stated by, perhaps, 25%).	
Q57	1. Ultimately, neither a one-size-fits-all approach nor a principles-based approach works in relation to the calculation of maximum sponsor support. 2. A one-size-fits-all approach does not work for the reasons referred to in the consultation paper – it would not take into account the different organisations who sponsor IORPs (not just commercial or not-for-profit but tax-payer funded organisations) or the complex financial arrangements within each individual organisation that sponsors one or more IORPs. 3. However, a principles-based approach is not practicable either. It will lead to	

	mass complexity and mass divergence of approach from one member state to another. At some point, broad principles will have to applied in practice and there is a real danger that this will lead to disproportionate costs being incurred – for all the reasons recognised by EIOPA, this is not a straightforward exercise. If EIOPA cannot develop a straightforward, proportionate and appropriate way of measuring sponsor support, it must presumably be a complex process and one that EIOPA is potentially expecting each IORP to develop for itself. 4. The "simplified" method put forward by EIOPA involves a cliff-edge distinction between sponsors whose value exceeds M times the value of sponsor support includes in the HBS and those sponsors who do not. Not only is there a cliff-edge to this distinction, the M multiple is totally arbitrary and so will inevitably lead to perverse results.	
Q58	We do not see how a further QIS (should one be necessary – a question that should not be presumed to have a positive answer) could be carried out without EIOPA specifying parameters to use to determine maximum sponsor support. Without such parameters, each approach taken would be different and so there would be no continuity amongst different approaches to the HBS.	
Q59		
Q60	The approach taken by the UK's PPF in relation to failure scores highlights how difficult it would be to replicate this process across the EU. The PPF's approach has been constructed by analysing financial performance of UK organisations which sponsor defined benefit pension schemes. Even within the UK, the same approach	

	could not be applied to the universe of organisations who sponsor defined contribution schemes. Added to which, there is no reason to believe that the same approach to this analysis could be applied in other member states.	
Q61	1. There is probably no single appropriate answer to this question. 2. In some instances, an IORP may be targeting the transfer of its liabilities to an insurance company over a relatively short time horizon. In that instance, the time period over which to consider payments from sponsors should, arguably, reflect the time period within which the proposed transfer is being targeted. 3. In other instances, there may either be no plans to transfer liabilities to an insurance company or this may simply not be feasible (perhaps because of the magnitude of the IORP's liabilities). In this situation, should the time period over which to consider payments from sponsors should, arguably, be the remaining lifetime of the IORP. While an approach which does not recognise the potential for the sponsor to fail seems flawed, an approach with seeks to recognise such potential could only look at short-term indicators if it is to be at meaningful (the further into the future one is trying to predict, the less accurate that prediction is likely to be). 4. Perhaps a simplistic approach could be implemented whereby the likelihood of the sponsor failing over the next twelve months is assessed and that assessment is then applied to the remaining expected lifetime of the IORP.	

Q62	An aggregated approach would appear to be feasible, provided it was based on the funding position of the sponsor's IORPs.	
Q63		
Q64	1. The suggested approach to multiple-employer IORPs seems to be based on the premise that each employer is jointly and severally responsible for supporting the IORP. While that might be the case (referred to in the UK as "last man standing" schemes), it will not necessarily be so. 2. Where an IORP's rules require a "partial winding up" on the failure of any one sponsor and shield the other sponsors from responsible for funding the failed sponsor's liabilities under the IORP, it would not seem to be appropriate to measure sponsor support on a collective basis. 3. It would seem that the approach to such IORPs should also depend on whether the sponsors all form part of the same corporate group or whether they are independent from each other. In some cases, where sponsors are all part of the same group, it might be reasonable to assume that none of the sponsors will fail unless they all fail. 4. The difficulty with the sampling approach is that, depending on each IORP, most of the liabilities could be the responsibility of only a few sponsors or the liabilities could be spread evenly over a large number of sponsors. Sampling would not	

	seem to be able to cope easily with these variations and still provide a meaningful answer.	
Q65	Multiple employer IORPs should be categorised depending on whether or not the sponsors are all jointly and severally responsible for supporting the IORP financially.	
Q66	If an HBS concept were to be implemented as part of a solvency-based prudential regime, it would be appropriate to take into account the provision of a guarantee to the employer, or to an IORP in respect of the obligations of the employer, when calculating the value of sponsor support. However, we question the suggestion that "If the guarantee covers the full sponsor support, replacing the sponsor with the guarantor in calculating sponsor support will probably simplify the procedure, as the guarantor is more likely to have a credit rating and more easily available data for assessing credit quality". This is not appropriate as a default approach where the guarantee covers the full sponsor support, because: a) pension schemes may benefit from diversifying their risk, by being able to rely on two possible sources of support (i.e. there may be a lower credit risk / stronger employer covenant for a scheme that has recourse to multiple parties than a scheme dependent upon one party, even if the liability of each party is capped at the value of the total liabilities of the scheme); and b) in some circumstances the sponsor may have a stronger credit rating than its guarantor (e.g. where the rating of the two entities changes after the guarantee has been granted), and this should be recognised.	

Q67	It should be noted that not all non-profit organisations will be not "asset intensive", as suggested by paragraph 4.237. In the UK, a number of non-profit organisations, in particular older institutions (e.g. the Church of England and a number of the universities), may rely on endowments granted by their founders or in historic or recent bequests or charitable donations, which could be invested in real estate or equities.	
Q68	We have a number of observations on such organisations: a) If other sources of information are not available to assess the current credit rating of sponsors for non-profit organisations, there may be a greater need to rely on historic data instead (e.g. previous rates of contributions). b) These entities may be particularly vulnerable to certain types of regulatory reform (e.g. changes to tax status), which should be considered when assessing the value of their sponsor support. c) In the UK, there are limits on the cross-subsidies available to charities and the extent to which they can accumulate surplus assets. Their sources of funding will usually differ from that of private sector employers (e.g. there may be additional restrictions placed on their use of certain assets, any rights to provide contract services may be subject to review and/or legislative change, and the rate of donations made may be volatile).	

	d) It may be possible for certain schemes to sell certain collections to cover funding deficits (e.g. recent sales by the Royal Geographical Society and the Royal Agricultural Society – see the following links: http://www.pensionsage.com/pa/royal-geographical-society-to-sell-3-6-of-collection-to-close-pension-deficit.php and http://www.rgs.org/NR/rdonlyres/E1FFB3CD-5313-4AB6-AB2B-E7ABC93BBAA2/0/UpdateforFellowsandmembersAugust2014.pdf). e) Certain charities may benefit from a "Crown guarantee" (e.g. National Museum and library of Wales) the benefit of which should be recognised in any HBS assessment.	
Q69	1. In the UK, there is currently no requirement to assess the availability of compensation from the Pension Protection Fund (PPF) under the pension scheme funding regime. Any requirement to value this support would be a new obligation, which schemes may have difficulty administering, particularly given the complexity as to how such compensation would apply to any particular scheme (depending on the value of both the total liabilities of the scheme, and the benefits to which individual members would be entitled). Accordingly, it would be a significant administrative exercise to assess the value of the PPF for their liabilities as a separate item. 2. Credit should be given for the fact that the existence of the PPF diversifies the risks facing the pension scheme (i.e. that the existence of the PPF means that the provision of benefits from most UK schemes is not dependent solely on sponsor	

	support). 3. In the UK, the value of most if not all schemes' benefit liabilities will exceed the value of the compensation that would be provided by the PPF. For this reason, it will not be possible for pension protection schemes to be valued as reducing all sponsor probabilities to zero. It would be a significant exercise for schemes to determine how PPF support should be valued for their particular scheme, particularly in the case of schemes which remain open to future accrual. Arguably the PPF itself would need to be involved in any assessment of the impact of any particular scheme entering the PPF, which would increase its costs unnecessarily (probably at the ultimate expense of UK pension schemes and their sponsors via the PPF levy). 4. A further point to note is that IORPs which are poorly funded and where members would potentially be eligible for compensation from the Pension Protection Fund should not be placed at an advantage to well funded IORPs where members would not be eligible for compensation from the Pension Protection Fund. 5. UK pension schemes and sponsors should not be penalised with an disproportionate, unnecessary, costly and administratively complex obligations, simply because the UK government has developed a sophisticated system for protecting a minimum level of pension scheme benefits, which would not sit comfortably with a new solvency regime (not even contemplated when the PPF was established) which will be applied primarily to jurisdictions which do not include such resources.	

	Given the administrative burdens discussed in the response to Q69, we are not in favour of including a separate valuation for the availability of PPF compensation. It would be more appropriate for the availability of PPF compensation to be treated as a factor that reduces the risk of sponsor default probabilities (but noting that reducing the risk to zero would not generally be appropriate). Response to Q69: [*1. In the UK, there is currently no requirement to assess the availability of compensation from the Pension Protection Fund (PPF) under the pension scheme funding regime. Any requirement to value this support would be a new obligation, which schemes may have difficulty administering, particularly given the complexity as to how such compensation would apply to any particular scheme (depending on the value of both the total liabilities of the scheme, and the benefits to which individual members would be entitled). Accordingly, it would be a significant administrative exercise to assess the value of the PPF for their liabilities as a separate item.* *2. Credit should be given for the fact that the existence of the PPF diversifies the risks facing the pension scheme (i.e. that the existence of the PPF means that the provision of benefits from most UK schemes is not dependent solely on sponsor support).* *3. In the UK, the value of most if not all schemes' benefit liabilities will*	
Q70		

	exceed the value of the compensation that would be provided by the PPF. For this reason, it will not be possible for pension protection schemes to be valued as reducing all sponsor probabilities to zero. It would be a significant exercise for schemes to determine how PPF support should be valued for their particular scheme, particularly in the case of schemes which remain open to future accrual. Arguably the PPF itself would need to be involved in any assessment of the impact of any particular scheme entering the PPF, which would increase its costs unnecessarily (probably at the ultimate expense of UK pension schemes and their sponsors via the PPF levy). *4. A further point to note is that IORPs which are poorly funded and where members would potentially be eligible for compensation from the Pension Protection Fund should not be placed at an advantage to well funded IORPs where members would not be eligible for compensation from the Pension Protection Fund.* *5. UK pension schemes and sponsors should not be penalised with an disproportionate, unnecessary, costly and administratively complex obligations, simply because the UK government has developed a sophisticated system for protecting a minimum level of pension scheme benefits, which would not sit comfortably with a new solvency regime (not even contemplated when the PPF was established) which will be applied primarily to jurisdictions which do not include such resources.*]	
Q71	As a general comment, it is imperative that UK schemes should benefit from the	

	existence of a national framework intended to protect members' benefits (when compared to pension schemes in other jurisdictions where similar protection regimes do not exist).	
Q72	It is difficult to comment on the appropriate role for the HBS, if it were decided to establish EU capital/funding requirements as part of pillar 1, because there are too many variables in issue. It is not clear why capital/funding requirements should be set at an EU level for IORPs that do not operate cross-border and are not in any sense market participants or open to consumers. The reasons for setting capital/funding requirements at an EU level and the level chosen would be likely to determine the merit of using the HBS to satisfy such capital/funding requirements.	
Q73	1. Again, this depends on the risk management responses available as part of Pillar 2 and what is meant by the question. 2. In principle, we would agree that the HBS can provide a method for assessing the risk to pension liabilities. 3. The determination of the appropriate supervisory response in response to any failure to balance the HBS is, however, a separate question which would need further consideration. 4. Also, the fact that it can be used and may be useful within a certain regulatory context (i.e., subject to the nature and adequacy of other regulatory requirements and risk management tools) does not mean that it should be used	

	given the complexity and cost of developing and applying appropriate methodologies – as is shown by the complexity of the issues in this consultation document.	
Q74	1. There are two key issues: the purpose of the Pillar 3 requirements and the rights of sponsors and other stakeholders in protecting the confidentiality of their economic and financial information. 2. Where there are decisions to be taken by members or beneficiaries or potential members or beneficiaries to which the disclosure of a Pillar 2 HBS assessment would be directly relevant, there is a case for disclosure to those members, beneficiaries and potential members and beneficiaries. We do not see any justification for any wider public disclosure (but acknowledge that disclosure to members may result in wider public disclosure). The level of detail required in any disclosure should be limited to what is required to meet the purpose of the (potential) members' and beneficiaries' decision taking, particularly having regard to the protection of other stakeholders. 3. We would urge EIOPA to consider very carefully requiring disclosure of information relating to any Pillar 2 HBS which could result in disclosure of financial or economic information relating to sponsors or from which such information could be extrapolated. The risk that participation in an IORP can result in disclosure of confidential information can only harm support for IORPs and pension provision through IORPs. 4. In addition, disclosing non-legally binding financial support or voluntary	

	contributions to pre-fund a policy of discretionary benefits could, in the UK, lead to that support and those payments becoming legally enforceable by members.	
Q75	1. Clearly this depends on the nature and appropriateness of the supervisory action as well as the content and methodologies used in the HBS. 2. In principle, we would think it could be appropriate to require an IORP to cease to increase its liabilities (i.e. cease future accrual or restrict the provision of new benefits including providing benefit increases which are not already unconditional) or not to accept transfers from other IORPs if a certain level of capital funding is not met or certain elements of the HBS do not balance. 3. Empowering authorities to take other steps such as forcing the IORP to wind up or transfer its assets and liabilities to another entity could result in further unnecessary detriment to the members and beneficiaries or to the sponsors or could amount to an interference with the pension contract and its conditions under national and social and labour law which is not justified by any duly conferred EU legislative authority. EIOPA has noted itself the risk of treating pension schemes as hard guarantees which were in fact meant to be different (para.5.70). EIOPA has also noted that the prudential framework should not aim at reducing the frequency and severity of pension protection schemes being triggered below the level accepted under national social and labour law (para 5.48). We agree with this.	
Q76	1. Option 1 – i.e. include non-legally enforceable sponsor support on the HBS.	

	2. To do otherwise (i.e. to exclude such sponsor support) would be to fail to recognise a significant measure of security for the benefits of members and beneficiaries of IORPs and, depending on the use that is made of the HBS, could result in unnecessary and inefficient Pillar 1 capital requirements, unnecessary and inappropriate Pillar 2 interventions or the need to qualify any Pillar 3 disclosures to avoid unnecessary alarm. 3. Non-legally enforceable sponsor support is not available in situations of insolvency but in other situations may be substantially relied on because it may be supported by commercial and reputational pressures and labour relations.	
Q77	1. Option 1 – i.e. include pension protection schemes. 2. In the UK, a decision was taken to provide a pension protection scheme as an alternative to requiring capital funding requirements at a level that would provide sufficient protection of members' and beneficiaries' benefit entitlements in all market cycles. This was on the basis that the required level of capital funding would otherwise be inefficient and damaging to the economy. If one were to disregard pension protection schemes a higher level of capital funding (whether or not including sponsor support) would be required without improving protection for members and beneficiaries. 3. As already noted, EIOPA has stated that the prudential framework should not aim at reducing "the frequency and severity of pension protection schemes" being triggered below the level accepted under national social and labour law (para	

	5.48) and is instead concerned with the impact of the HBS on the protection of members and beneficiaries, the functioning of the internal market (including cross-border activity and consistency with the insurance framework), the economy and national IORP systems (para. 3.15). 4. The requirement for higher capital funding that might arise from excluding pension protection systems would be bad for the economy and the UK IORP system. Disregarding pension protection schemes would distort comparisons of benefit protection and stability between IORPs or between IORPs and insured arrangements or arrangements not covered by a pension protection scheme or covered by a less adequate pension protection scheme.	
Q78	Yes.	
Q79	1. Option 2 or Option 3. 2. Mixed benefits as defined in para 4.70 are not part of the benefit promise and are subject to a discretionary decision-making process. They may be subject to conditionality but are not automatically payable when the objective condition is satisfied (unlike pure conditional benefits). As such, they are discretionary and not part of the benefit promise. Option 2 should apply. 3. However, we would accept that there may be member states where the discretion is treated as very limited under national social and labour law and that in practice such benefits are treated as conditional benefits or quasi-conditional benefits. To	

	accommodate this we would consider Option 3 to be reasonable.	
Q80	1. Option 3 – include all benefit reductions on the HBS. 2. This is provided that the benefit reductions can be identified on the HBS. 3. The distinction between ex-ante benefit reductions, ex-post benefit reductions and reductions in case of sponsor default may not be robust. For instance, in the UK most IORPs provided from outset for various benefit reduction mechanisms in response to underfunding of the IORP, including but not limited to sponsor default and including but not limited to the termination of the IORP. Those provisions have been restricted by national law and largely now apply only in case of sponsor default but could in principle apply under other conditions. In effect, ex-ante reduction mechanisms may have been recharacterised as ex-post or reductions in case of sponsor default. 4. Including any reduction mechanism in the HBS may give a false picture of the protection for member benefits. Excluding them may however result in increasing the capital requirements, improving the pension promise or result in unnecessary or disproportionate supervisory intervention. The issue then turns on how the HBS is to be used - for Pillar 2 responses or Pillar 3 disclosure or Pillar 1 capital requirements. 5. Provided the benefit reductions are identifiable on the HBS, we think the better	

	approach is to include all benefit reductions.	
Q81	We think the correct approach is to recognise the level of cover for benefits subject to reduction and benefits not subject to reduction. This is standard practice in the UK based on the IORPs assets and technical provisions.	
Q82	1. We are not entirely clear what these off-balance capital instruments would be in the context of UK IORPs. 2. Provided the off-balance capital instrument is legally enforceable and recoverable by the IORP in all circumstances it's value should be eligible to cover the SCR. We consider that these instruments should be valued in light of their availability in an underfunding scenario so that, where appropriate, a probability-weighted current value of these cash-flows represents the 'value' that can be used to cover the SCR.	
Q83	1. "Surplus" is not defined. In the UK, only funds in excess of full solvency could be refunded to sponsors if that is permitted by the rules of the IORP and specific regulatory conditions are met. This only occurs very rarely. 2. However, this is agreed assuming "surplus" in this context refers to funds in excess of technical provisions. In the UK, there is no supervisory approval required for surplus funds to be held by IORPs. Surplus funds are retained for the benefit of the scheme. Only funds in excess of full solvency may be refunded to sponsoring employers, and even then, only where there is a power under the	

	rules of the IORP which permits such a refund and certain regulatory requirements are met.	
Q84	We are unsure how this reference to subordinated loans is of relevance to IORPs bearing in mind Article 18(2) of the IORP Directive which provides that: "*The home Member State shall prohibit the institution from borrowing or acting as a guarantor on behalf of third parties. However, Member States may authorise institutions to carry out some borrowing only for liquidity purposes and on a temporary basis.*"	
Q85	1. There is already a regulatory structure in place in the UK for establishing technical provisions, which has, since 2004, required a level of prudence to be applied over 'best estimate' values on a scheme specific basis. The UK supervisory body has recently updated its guidance on funding and IORPs are now required to take an integrated approach to risk (taking account of employer-covenant related risks, investment-related risk and funding-related risk) and a prudent approach to funding must be balanced with minimising any adverse impact on the employer's sustainable growth. IORPs must prudently choose the assumptions to be used for the calculation of technical provisions (including discount rates). Guidance states, "They should choose individual assumptions the prudence of which is consistent with the overall level of prudence required of the technical provisions. They must consider whether, and if so to what extent, account should be taken of a margin for adverse deviation when choosing prudent economic and actuarial assumptions." These assumptions form the basis	

	for the funding requirements of the IORP. 2. In our view, there is no reason to require UK IORPs to move away from this approach. 3. Whilst we do not believe it would be appropriate to change the existing approach in the UK, to answer the question, we consider of the two options proposed that Level B best estimate of technical provisions would be the preferable option. We agree that of the two options this encourages investment in long-term assets and allows for a more economically efficient approach to funding of long-term liabilities. Also the Level A approach would restrict the ability of sponsoring employers to invest in the growth of their business thereby weakening the support they can provide the IORP. We consider the Level A option to be too onerous.	
Q86	It should apply as a member state option. In the UK, applying the Level B approach would potentially lower the current scheme specific funding arrangements of UK IORPS. We are firmly of the view that there is no good justification for changing funding measures and obligations for IORPs. The damage to the confidence of employers and members in the fairness and stability of regulation of pensions would be significant and it would damage not enhance pension provision.	
Q87	1. We do not consider that Level A or Level B should be imposed, particularly in the UK context where the Level B minimum level of technical provisions does not require a margin for prudence as is currently required for setting scheme funding requirements and to apply Level A as the minimum standard would be onerous	

	on sponsoring employers. 2. However, if one of these requirements is to be imposed, it should be Level B. 3. We agree strongly however that the existence of sponsor support, pension protection schemes or benefit adjustment rules should not be disregarded. Our view is that the protection they offer members and beneficiaries is sufficient in combination with existing funding requirements under the IORP Directive and national legislation.	
Q88	If adopted (which we do not consider necessary), it should apply as a member state option only.	
Q89	It is acknowledged that funding obligations for IORPs may be viewed as integral to the employment relationship and may be therefore categorised as a matter for national social and labour law rather than prudential regulation. Indeed one concern about EU capital/funding requirements is that they interfere with the pre-existing obligations of employers. We would see no objection to member states specifying additional funding requirements under social and labour law. However, this would obviously require some ring-fencing of assets for schemes operating cross-border."	
Q90	1. If the concept of HBS which is finally decided upon is going to include all available steering instruments – for example, valuation of both sponsor support and of pension protection schemes on the asset side, benefit reduction mechanisms and all discretionary mechanisms on the liability side, then logically there are no	

	further "tools" available for a recovery plan if the funding level is too low. Effectively the recovery plan is already included in the HBS in the form of the steering instruments available to the IORP. 2. Notwithstanding this, if there are recovery plans, it should be a member state option to set the length of that period, subject only perhaps to some overarching principles to be set out in the Directive. 3. Ultimately, whatever approach is taken it must reflect the national social and labour law environment within which the IORP operates in each member state.	
Q91	As above. But again, if there are to be recovery plans, we think it should be a member state option as to whether these should be short or long periods of time.	
Q92	4. As above 5. If recovery plans can exist, then we would expect a national supervisor to want to see some security mechanism- whether through potential for additional sponsor support or even a pension protection scheme before approval is given. We consider prior approval would be sensible.	
Q93	In addition, we do not consider that HBS should be used for Pillar 1 purposes and therefore for the concept of SCR.	

Q94		
Q95		
Q96	We think it should be open for member states to have specific supervisory responses at member state level.	
Q97	Member states have a wide range of national social and labour laws which impact on IORPS. They also use available contractual frameworks in a number of different ways and also involve different social partners in a number of differing structures and collective or individual bargaining frameworks. These structures would be negatively affected by maximum harmonisation. It is important to retain member states ability to maintain different pension structures. Respecting different national social and labour laws would not however prevent a greater degree of harmonisation in relation to governance and risk management as currently proposed in IORP II. Governance and risk management do not need a single harmonised prudential framework in order to be properly implemented in member states.	
Q98	It will be essential to have transitional measures if significant changes were really to be proposed to the existing member state regimes – whether this is applying any new structure to new members of IORPs under new contracts or even to future accrual for existing members. In any event, only existing regimes should be applied to pension rights built up to date.	

Q99	This appraoch would be far removed from the current system being operated by IORPs in the UK, would lead to significant difficulties for the sponsors of those IORPs and could have a significant negative effect on the UK economy.	
Q100	No. We do not consider that example 4 could realistically be adopted for IORPs in the UK without placing an unreasonable burden on UK business and we expect that the same could be said for many other EU Member States.	
Q101	This approach appears to reflect, to a large degree, the current funding regime within the UK.	
Q102	No. Different member states have established different bases on which IORPs domiciled within those member states should operate. There does not appear to be any need to disturb those arrangements other than, perhaps, where an IORP wishes to operate on a cross-border basis.	
Q103	1. This approach appears to create a substantial amount of complexity for IORPs to deal with. We remain uncertain as to the need for a Pillar I HBS and whether any desire to be able to make comparisons between IORPs in different countries justifies the complexity that would be involved here. 2. The Pillar 2/3 HBS does not seem to deliver any advantages over and above the current funding regime applicable to UK IORPs.	

Q104	No. We do not consider that example 3 could realistically be adopted for IORPs in the UK without placing an unreasonable burden on UK business and we expect that the same could be said for many other EU Member States.	
Q105	1. We are not in favour of example 4 from a UK perspective. The most any HBS should be used for is an internal risk management tool. 2. This example would involve using the HBS to apply a watered-down insurance style solvency requirement to IORPs. Although this option allows for more flexibility when assessing whether IORPs meet the SCR and Level A TPs, this is through reliance on pension protection schemes and benefit reduction mechanisms (both ongoing and in the event of sponsor default). We do not consider that it is safe to rely on these factors in the UK context as justification for the application of the SCR and Level A TPs to UK IORPs. The UK's Pension Protection Fund would not cover all of the benefits of an IORP and it is therefore unclear how much reliance or value could be placed on it for these purposes. Also, in the UK context DB pension plans are unable to reduce accrued benefits (unlike IORPs in some other Member States), so this would not mitigate the impact of imposing this approach on UK IORPs. If the HBS is used to impose SCR on IORPs, this should be based on the Level B 'best estimate' TPs to the HBS rather than Level A TPs with national Member States to specify stronger standards if appropriate. 3. We also strongly disagree with the proposition that if an IORP does not meet the SCR the starting point should be a recovery period of less than a year to increase	

	financial assets and/or reduce mismatch risk. The Consultation Paper recognises that this period may be extended through national social and labour law, referring to Member States permitting substantial recovery periods. However, we think that the divergence between the prescribed 1 year period and Member States' flexibility to allow substantial recovery periods is unhelpful and no set period should be prescribed, with recovery period durations left to Member States and their supervisory authorities. 4. We are not convinced that the perceived benefits of this example in terms providing stimulus for cross-border activity or minimising the scope for regulatory arbitrage are real and certainly do not justify the additional burden this would place on employers. We do not consider that increased cross-border activity of DB pension plans is a meaningful prospect, with a very high proportion of DB plans now closed to new entrants and further accruals. We are also not aware of the exploitation of regulatory arbitrage for DB plans across Member States. 5. Also, EIOPA's analysis of all the examples of supervisory frameworks ignores the practicality of the framework for IORPs and supervisors, and the costs of implementation (para 5.148), but these are extremely important factors. Costs could be significant – the Commission's own papers estimated the costs of the current IORP Directive alone at a one off extra Euros22 per member (over £300m for UK pension schemes) and this does not include the additional costs of complying with HBS/SCR requirements.	
Q106	No. We do not consider that example 4 could realistically be adopted for IORPs in the UK without placing an unreasonable burden on UK business and we expect that the	

	same could be said for many other EU Member States.	
Q107	1. We are not in favour of example 5 from a UK perspective because our position is that if IORPs are only required to use the HBS as a risk management tool, it should only be an internal tool and the proposal for the harmonisation of TPs on a market-consistent basis across Member States would undermine the UK scheme specific funding regime. 2. In relation to the use of the HBS as a risk management tool the Consultation Paper refers to its assessment being subject to public disclosure, but also to national supervisory authorities being able to require IORPs that have insufficient assets to cover the SCR to put in place a recovery plan in order to ensure the IORPs are able to fulfil the pension promise. We think there is a risk that, although presumably not intended by this example, this could still introduce insurance style solvency requirement to IORPs and that the use of the HBS should be as an internal tool only. The Consultation Paper also refers to the supervisory authorities having the power to force IORPs to modify the pension arrangement to ensure that the pension promise can be fulfilled and, given the inability under UK law to reduce accrued benefits, we do not consider this is a realistic option. 3. The proposal for the harmonisation of TPs on a market-consistent basis across Member States would cut across the UK's existing scheme specific funding regime. This regime is a flexible one which takes account of the individual circumstances of UK IORPs and their sponsoring employers. As such we would view it as a retrograde step, attempting to impose a "one size fits all" regime on	

	the diversity of UK IORPs. 4. We are not convinced that the perceived benefits of this example in terms providing stimulus for cross-border activity or minimising the scope for regulatory arbitrage are real and certainly do not justify the additional burden this would place on employers. We do not consider that increased cross-border activity of DB pension plans is a meaningful prospect with a very high proportion of DB plans closed to new entrants and further accruals. We are also not aware of the exploitation of regulatory arbitrage for DB plans across Member States. 5. Also, EIOPA's analysis of all the examples of supervisory frameworks ignores the practicality of the framework for IORPs and supervisors, and the costs of implementation (para 5.148), but these are important factors. Costs could be significant – the Commission's own papers estimated the costs of the current IORP Directive alone at a one off extra Euros22 per member (over £300m for UK pension schemes) and this does not include the additional costs of complying with HBS/SCR requirements.	
Q108	No. We do not consider that example 5 could realistically be adopted for IORPs in the UK without placing an unreasonable burden on UK business and we expect that the same could be said for many other EU Member States.	
Q109	1. Subject to our comments below, we would be in favour of example 6 provided this approach did not disturb the UK's existing scheme specific funding regime and, as long as it was modified so that it was no more than an internal risk management tool, an appropriate way to incorporate the HBS within the existing	

	DB funding regime. We therefore object to the references to the national supervisory authorities having the power to require IORPs that have insufficient assets to cover the SCR to modify the pension arrangement. In addition, under UK law there is no ability to reduce accrued benefits and the existing scheme specific funding regime already contains adequate provision for the termination of future accrual of benefits by regulatory authority where the IORPs' funding position makes this necessary. 2. However, as explained below, we are not convinced that even this step is needed as it will add another layer of regulation and compliance to UK DB pension plans, duplicating an approach which is increasingly being adopted in the context of the UK's scheme specific funding regime without any real benefit in terms of cross-border activity or preventing regulatory arbitrage. 3. We are not convinced that the perceived benefits of this example in terms providing stimulus for cross-border activity or minimising the scope for regulatory arbitrage are real and certainly do not justify the additional burden this would place on employers. We do not consider that increased cross-border activity of DB pension plans is a meaningful prospect, with a very high proportion of DB plans closed to new entrants and further accruals. We are also not aware of the exploitation of regulatory arbitrage for DB plans across Member States. 4. Also, EIOPA's analysis of all the examples of supervisory frameworks ignores the practicality of the framework for IORPs and supervisors, and the costs of implementation (para 5.148), but these are important factors. Costs could be significant – the Commission's own papers estimated the costs of the current	

	IORP Directive alone at a one off extra Euros22 per member (over £300m for UK pension schemes) and this does not include the additional costs of complying with HBS/SCR requirements.	
Q110	If introduced as an internal risk management tool we do not consider that there are an fundamental obstacles to the use of example 6 in the UK or in other Member States although it would add another layer of compliance for UK DB schemes and potentially duplicate existing approaches to complying with the UK's scheme specific funding regime. This risks incurring additional costs for no discernible benefit.	
Q111	1. We suggest that significant further thought is given to whether any potential benefits that might flow from the introduction of an HBS regime would outweigh the costs and complexities of such a regime. 2. As mentioned previously, it seems highly unlikely that the introduction of an EU-wide HBS regime would result in many (if any) UK IORPs providing defined benefit pensions on a cross-border basis. In addition, we are not aware of the exploitation of regulatory arbitrage for DB plans across Member States to any degree. As such, any increased costs and complexities resulting from an HBS regime seem difficult to justify. 3. The difficulty with applying simplifications is that they are likely to work on an arbitrary basis (for example, setting M as 2) and are therefore likely to lead to perverse results which will undermine the entire system.	

	4. We suggest that further consideration is given to simplifications which involve using a pension protection scheme (regardless of the level of benefits provided by that scheme) together with sponsor support as balancing items so that, in the vast majority of cases, the HBS will always balance. This would leave national regulators to monitor funding in accordance with the IORP Directive on the current basis.	