-	Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation	Deadline 02.01.2012 18:00 CET
Company name:	AON HEWITT	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public
	The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006). **Please follow the instructions for filling in the template:** ⇨ Do **not** change the numbering in column “Question”. ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. ⇨ There are 96 questions for respondents. Please restrict responses in the row “General comment” only to material which is not covered by these 96 questions. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below. ○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies. ○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	**Comment**	
General comment	Aon Hewitt, the global human resource consulting and outsourcing business of Aon Corporation (NYSE:AON) and a market leader in risk and people management services including advise to local and global organisation on retirement and investment policies, welcomes the consultation launched	

	by EIOPA in response to the call for advise on the review of Directive 2003/41/EC. Aon Hewitt has always been and remains an enthusiastic supporter of the potential of cross border IORP as a multi-country pension funding vehicle. In particular we believe that cross border IORPs offer multinational employers a valuable business opportunity to drive operational efficiency in their pension provision and to significantly improve their pension plan governance. Our experience of working with our multinational clients to implement cross border IORPs suggests that the barriers are often more perceived than real. The principal challenge to increasing the number of cross border IORPs and releasing their potential to deliver business benefit is therefore greater transparency and better communication. We do not believe that Directive 2003/41/EC requires major overhaul from a cross-border perspective, other than to apply a common definition of what constitutes cross border activity. The action of the European Commission and the rulings of the European Court of Justice, have addressed the most significant tax barriers to the operation of cross border IORPs. The framework for the registration of IORPs in their Home State and notification to Host State regulators is clear and workable. Further the current framework gives employers the opportunity to achieve operational efficiency through asset pooling, rationalisation of benefits administrators and the consolidation of existing funding vehicles. We have also seen new IORPs adopt best practice in their governance, providing rigorous oversight of third party suppliers such as investment managers, administrators and custodians, as well as providing greater oversight and control of plan risks and liabilities. Our clients have also seen a host of further benefits including consistent internal branding of the pension plan, economies of scale derived from centralising functions and reducing the number of suppliers, enhanced management information, improved efficiency in the context of mergers and acquisition, and multi-country liability management. As a general principle and in line with the main reason evoked by the European Commission in its CFAs to EIOPA of 30.03.2011, the top policy rationale for revision should remain the simplification of the legal, regulatory and administrative requirements for setting-up cross border pension plans. Meanwhile, there is a compelling need for immediate action at the European and national levels on the front of communication to address the perception of complexity of the pan-european regulatory framework,. The European Commission, with the cooperation of EIOPA and of different stakeholders should drive and support a major initiative of communication in this area, that does not require any	

legislative change,

The results of our survey carried out in December 2011 among 60 major corporations operating in Europe, with workforces in excess of 2 million staff, clearly show that the perceived lack of a pension friendly regulatory environment is the most important factor hampering the provision or the expansion of occupational pension arrangements (mentioned by 72% of respondents). The second most important factor (for 58% of respondents) is the financial risk related to any pension promises, followed by the cost of benefits (54% of respondents). When questioned about the relevance and pertinence of cross-border arrangements, an overwhelming majority express a positive judgment on such opportunities (76% of respondents). However, the top three factors stopping employers from establishing pension arrangements at cross-border level are, in order: the perceived complexity of legislation (66%), the lack of clarity on how this works and is regulated (48%) and a perception of cumbersome national requirements (40%). Another third of respondents hesitate to leverage the Single Market opportunity, because of a fear of potential legislative changes that would make these arrangements more costly.

More importantly, from a policy making perspective, the key advantage quoted by respondents for setting up a cross-border pension fund is the possibility to improve the governance of their pension plans (57%), followed by the opportunity to facilitate the management of mobile employees' benefits (47%) and the reduction of administrative burdens and management time (46%). Equally there is a significant desire to ensure greater consistency and coherence of pension plan conditions at the European level (43%).

Respondents to this survey have a long standing experience with pension fund management. 72% of these organisations have already local pension arrangements in place in more than 6 European countries, while covering more than half of their entire workforce.

Employers play an important role in providing complementary financial benefits to their retired employees through occupational pension plans. Moreover the nature and scope of pension fund investment policies, pursuing a long term investment goal, play a crucial role of stabilization for the European economy. Such roles are likely to increase in the foreseeable future, given demographic trends and the ageing of the European workforce.

The affordability of current and future pension arrangements for the employers should be duly considered by policy makers at the national and at the European levels. Any new measure should not undermine the cost-effectiveness of occupational retirement provision in the EEA. As such, any new measures should:

- Allow employers to maintain the flexibility on the scope of retirement programs that are in alignment with their labour strategy and needs;
- Consider affordability from the perspectives of both financial costs and financial risks;
- Promote ease of administrative and governance policies; and
- Privilege bottom-up convergence of good practices and mutually recognized interpretation of the EU regulatory framework, rather than top-down standardisation that could undermine well functioning pension markets.

Therefore we submit that undue increase in the costs (including volatility of such costs) of providing occupational pension for the employer, or for IORPs managing such arrangements, run the risk of reducing rather than expanding the availability of occupational pensions for European employees.

The deployment of a more business-friendly regulatory environment for occupational pensions would help employers, employees, IORPs and financial service providers to reap the full benefit of the EU Single Market. It will also have a broader favourable impact on the whole European economy. Supporting employers to provide good occupational pension provision, without overburding them with further liabilities and capital requirements, would be the best way to safeguard employee interests.

The blind transposition of the Solvency II requirements that are due to be applied to the insurance sector will undermine the affordability of employer based pension arrangements and overburden their management. Moreover we have severe doubts about the availability in the short and medium term of adequate skills and professionals in all Member States - notably in the actuarial sector – to respond to the potential increased market demand if a regime comparable to Solvency II were applied to IORPs.

In our European employers' survey, three quarters of respondents consider that a possible alignment of pension fund solvency requirements to those in place for insurance companies would increase the cost and affordability of pension provision. Just under half say they would provide only pure defined contribution pensions, which may well be less attractive to employees and a significant number talk of benefit reductions in response to these legislative changes.

Given the material implications of possible changes outlined in the EIOPA consultation paper, we are concerned at this stage by the lack of a thorough impact assessment and cost benefit analysis. We think that the following preliminary questions should be addressed in any such analysis:

- What are the problems that must be solved?
- Which categories of pension vehicle do these problems apply to?
- How do the proposed solutions address the problem?
- Are the costs and negative impacts justified by the benefits from mitigating whatever the problem is?
- What alternatives are there to solve these problems, beyond legislative changes at the European and/or national levels?

Previous analysis made within the actuarial profession has highlighted a trade off between the level of benefit targeted, the degree to which benefits can be reduced in the event of a shortfall, and the degree of security. Different countries have adopted different approaches. A high level of security is not affordable if the benefits are generous and can't be reduced. Variation in security levels across IORPs is a consequence of the different compromises adopted and is not evidence of an underlying problem in relation to solvency.

If, as it appears, the proposals will require greater assets somewhere in the "Holistic Balance Sheet" if the plan invests in "risky" rather than "matched" assets, then, like insurers, IORPs will be forced or incentivised to reduce their investment in equities etc and increase their investment in bonds. EIOPA should highlight the potentially enormous switch of assets from equities into bonds, and the macro-economic impact would need to be included in the cost benefit analysis.

We also have reservations regarding the analysis regarding the need for consistency across financial sectors. EIOPA highlights the significantly larger number of IORPs, in comparison to insurers, in the context of supervisory difficulties. In our view a much more important factor, omitted from the commentary, is the ability of small IORPs to produce additional information (and the cost of them doing so relative to the value of liabilities involved). This should be a major factor in any decision.

	We further submit that the new rules should be applicable only for new registrations and not apply to existing IORPs' arrangements with a view to guarantee the certainty and predictability of the regulatory framework for those employers who have already established IORPs under the current legislation. An opt-in opportunity for such IORPs could be made available over a prescribed period of time after the adoption of the revised directive. Meanwhile, even the best legislative framework would not produce any positive impact without a thorough implementation at the local levels. We consider that national supervisory authorities, EIOPA and the European Commission have, beyond their respective institutional duties, a crucial role to play in ensuring full transparency and effective implementation of legislative requirements. A renewed joint effort of the institutions is also required in terms of financial education of future and current retirees. Key stakeholders should be directly associated in the design and launch of such information and education initiatives that need to be deployed at the national level.	
1.	We support Option 2 that would clarify the letter and the scope of the current Directive while including the occupational pension systems in the new member States. The directive should be clearer when excluding companies that use internal provisions to cover retirement benefits for employees such as those in Spain where companies have both book-reserves and occupational qualified pension funds (in particular in the Banking Sector, Insurance and Stock exchange brokers).	
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5.	We support the idea of a common definition of cross-border activity provided that the definition of "host Member State" retains a reference to the relevant social and labour law. A close link should remain applicable with the relevant social and labour law for occupational pensions that govern the relationship between sponsoring undertaking and members. To ensure greater convergence towards a common interpretation of cross-border activity (if not possible in the body of the Directive) such convergence of interpretation can be fostered through the follow-up implementation of a revised Budapest protocol backed by EIOPA or through level 2 measures. Option 2 as proposed by EIOPA risks artificially widening the number of cross-border cases and	

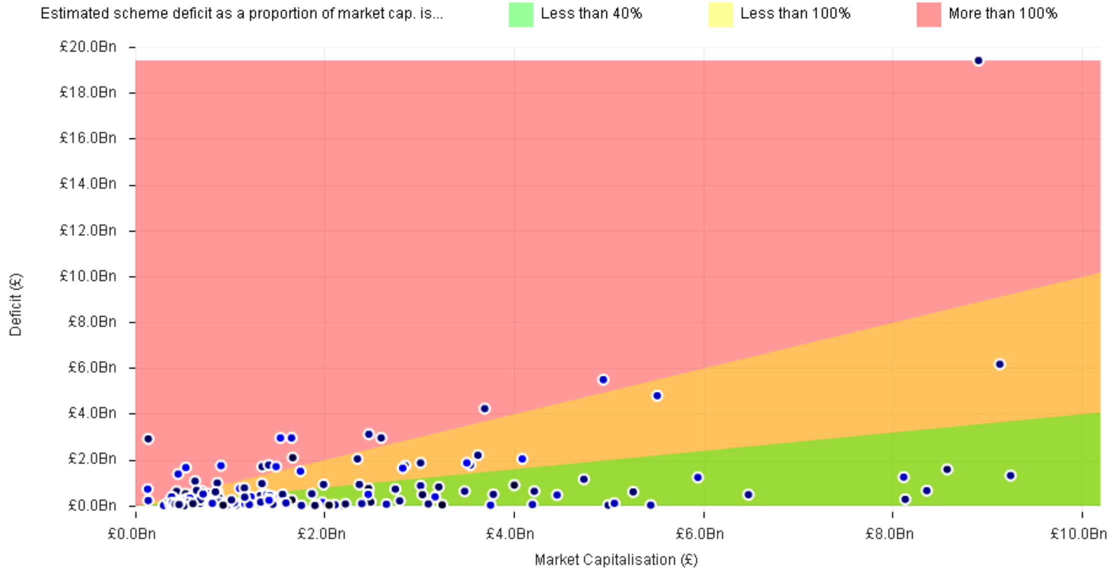
	jeopardize the application of labour law. We agree with the proposed amendment of the definition of sponsoring undertaking included at point 7.3.11 of EIOPA CFA and covered by article 6.c of the Directive. It is worthwhile introducing a new reference to the sponsoring undertaking identified as the one who supports the plan.	
6.		
7.		
8.	We are not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the host country.	
9.		
10.	We submit that the Prudential regulation should be governed by the applicable regulations of the home country of the cross-border institution. The home country should have in practice the lead responsibility on determining and following up on prudential regulation issues. Any solution must ensure that an institution has to deal with only one supervisory authority rather than several different authorities. The current Directive identifies a list of items that are under the responsibilities of the home state. The challenge in considering such a list as prudential rules runs the risk of circumventing member State competence and undermines the principle of mutual recognition underpinning the IORP Directive and most of the Single Market regulation. Therefore, transparency and convergence rather than harmonisation seems to be more appropriate objectives. In particular by ensuring that each member state clearly identifies and separates SLL from what they consider prudential rules. An indication should be made into the Directive to ensure that same or similar items are not covered by two jurisdictions or authorities even within the same country. The revised directive should also indicate a procedure to settle problems that may arise between national authorities.	
11.		

| 12. | The case for changing to a harmonised approach has not yet been made. We agree that a full cost benefit analysis would be required, in line with your comments at paragraph 8.2.38, and it seems likely that the significant additional costs may outweigh any benefits, particularly as it is far from clear what steps might be taken where a holistic balance sheet indicated that a scheme was insolvent (see below).
Having different regulatory regimes applying to different types of pension vehicle is not in itself a problem. It only becomes a problem if pension vehicles subject to one or more or the differing regimes generate unsatisfactory outcomes too often as a result of weakness in that regime. Neither the EC nor EIOPA have demonstrated that this is the case.

Many of the issues in adopting a holistic balance sheet approach will be contained in the details – one key area of uncertainty is how the employer covenant will be allowed for.
The existence of a scheme sponsor is a significant feature which should be reflected in any funding regime. This means that a distinction between the various categories on IORP will be required. A suitable outcome could be produced though either distinct frameworks or a single "flexible" framework.
Consideration of what steps might flow from an insolvent balance sheet should be central to the cost benefit analysis. Unlike many insurance companies, sponsor backed IORPs are not profit making organisations. An insurer that falls below the SCR will not be able to write new business and therefore has a strong incentive to rectify the position. In contrast, it is not clear what sanctions could be imposed on an IORP that fails to meet the requirements. They will have no motivation for seeking to raise additional capital from shareholders. Many employers in the UK are already paying in as high contributions as they can reasonably afford. Imposing significantly more demanding requirements for contributions could force some companies into insolvency and have a detrimental impact on economic growth. In addition, moving cash from the sponsor to the IORP may not help the "holistic balance sheet".
There is no point in imposing vast costs performing the very complex calculations implied by Solvency II unless this produces real improvements in actual outcomes, not just better measurement but with no change to outcomes. The consultation paper does not address the question of what actions if any could be required where the "Holistic Balance Sheet" strength falls below the benchmark. It should be noted that it appears likely that, for a significant proportion of plans and their sponsors, the "Holistic Balance Sheet" strength would fall below the benchmark on day one.
By way of illustrating the practical issues posed by this proposal, we have carried out some | |

	preliminary modelling, which we would be pleased to share and develop with EIOPA. In the absence of clarity on the definitions of assets (eg sponsor covenant) and liabilities (buy out or beyond?) we have carried out some simple modeling of the FTSE 350 companies. We have estimated discontinuance deficits as at 8 December 2011, using some VERY broad brush assumptions from published accounting deficits to discontinuance (by way of explanation simple basis changes tend to break down at times of stress such as negative real rates currently experienced in the UK). These deficits have been compared with Market Capitalization of sponsor, as provided by DataStream, as at 8 December 2011. The results are illustrated and summarised below.	

Discontinuance Deficit Divided by Market Capitalisation	Proportion of FTSE 350 Companies with DB obligations
Over 100%	13%
40-100%	16%
Under 40%	71%

		
13.	We support this view. Nevertheless, due attention should be taken to avoid that capital requirements become too volatile.	
14.	We agree that no reference to transfer value should be included. There is no standard basis for transfers between IORPs and the number of transfers from IORPs to insurance companies is relatively small. In addition, many of the largest schemes would have difficulty securing their	

	liabilities with an insurance company and so there is no market for these liabilities.	
15.	Yes.	
16.	We do not believe that EIOPA should take a view on whether supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards before deciding the approach to be taken to • Taking account of the sponsor covenant • Valuing technical provisions For example, for non-financial companies at the very least, it would probably not be appropriate to place a value on the sponsor covenant derived from the value of net assets under accounting standards. Also, it is hard to see how both Level A and Level B technical provisions could both be consistent with accounting standards. Even if this principle were thought appropriate, it would be necessary to specify the relevant accounting standards. The accounting standards for insurers, for the cost to employers of providing and for accounting and reporting by pension plans are all different. It is likely that there will be areas where consistency with accounting standards is appropriate (such as valuing the assets of the IORP) and areas where it is not, so that a selective approach will be required, rather than a presumption of consistency.	
17.	Our general comments on whether it is appropriate to make significant changes to the current directive apply. However, assuming it is established that such changes would be beneficial the proposals seem reasonable. In isolation, we would prefer the change outlined in option 1 in respect of Article 76(3) as this allows additional flexibility.	
18.	A new requirement for a special risk margin should be carefully assessed in terms of effective need and impact for the different national systems, notably in Germany. IORPs' business model is "held-to—maturity" rather than "held-for-sale". As such there may be enough risk buffer when taking also into account the extreme long maturity/duration of the tilme horizon fo reference. The use of Option 1 may be preferred as this would result in the least amount of change from the current directive. The risk margin above best estimate would need to be stated explicitly but there is already a similar requirement under professional guidance in some specific system such as UK.	
19.	We agree that cost relating to future accruals should not be taken into account - only expenses relating to benefits which have already accrued should be included in the technical provisions.	
20.	Generally, yes, although where pension payments are backed by insured annuities there should be	

	flexibility to exclude the value of such insured annuities from both assets and liabilities and minimise unnecessary valuation expenses.	
21.	There appear to be three options put forward at paragraph 9.3.88 onwards. Our preferences would be, in order, option 1 (which involves no change), option 3 (which provides two measures, one of which is similar to the current approach) and option 2 (which is significantly more onerous than current requirements). We note that option 1 was not included in your advice on the grounds that it was "not consistent with the holistic balance sheet". We think this option should be retained and included in a cost benefit analysis.	
22.	No comment.	
23.	We agree that non-discretionary benefits should be included in technical provisions. Our view is that there should be no requirement for discretionary benefits to be included although individual employers and trustees might agree to allow for them in their technical provisions.	
24.	Yes.	
25.	Yes, but the wording should make it clear that, for IORPs, in many cases adopting a single risk group (ie no segmentation) may be a reasonable and proportionate approach.	
26.	Generally, we think that these should be treated as assets. However, where pension payments are backed by insured annuities there should be flexibility to exclude the value of such insured annuities from both assets and liabilities and minimise unnecessary valuation expenses.	
27.	This should not cause significant difficulties.	
28.	This should not cause significant difficulties, provided that it is clear that the requirements can be applied proportionately and to material assumptions.	
29.	This is in line with current practice in some countries such as UK.	
30.	Yes.	
31.	Any implementing measures introduced should be proportionate and avoid placing excessive requirements on IORPs.	
32.	This depends on the solution reached – if the ultimate outcome is something close to the current IORP Directive then it would make sense to retain Article 15(5) or something similar. However, if the ultimate outcome is closer to the Solvency II regime then it would not be appropriate to allow individual Member States to set additional rules.	
33.	We believe that valuing employer support would be a complex task and that it may not be possible to	

	arrive at a robust and accurate valuation (paragraph 9.3.199). The task becomes even more problematic for VaR. It is far from clear that the benefits of requiring all IORPs to carry out this work as part of their valuation process would outweigh the additional costs involved, not least because the paper completely fails to address how the employer covenant will be valued. Consequently, it is far from obvious that the approach can be made to work at all. This must be addressed before considering whether to apply this approach. It will be too late once the decision in principle has been taken. For example: • For insurers and non-recourse IORPs, their assets are almost entirely financial, so it is generally straightforward to place a fair value on these whereas, for non-financial companies, much if not most of the assets will not be valued at fair value. Indeed in many cases a high proportion of the company's value/assets will not be on the balance sheet at all (eg intellectual property). • Even following a decision on how to put a value on the company's assets, it would still not be clear how to assess the required SCR. For financial assets, it is possible to build a probability model around the potential changes in the value of each asset, and the correlations between different assets. For a non-financial company, this is unlikely to be feasible, and it is difficult to see how to quantify the required SCR otherwise. • One short-cut would be to consider the market value of the sponsor, and consider this alongside the probability of insolvency of the sponsoring employer. It should be noted that a large proportion of sponsors who are non-financial companies have a one year probability of failure in excess of 1 in 200, so would be assumed to provide no support at that level. Although it would be difficult to model, the reduction in value of most other sponsors at a 1 in 200 level would be significant. Depending on the methodology adopted, it is possible that a large proportion of evaluated employer covenants would fall short of the difference between assets and liabilities and result in a failure from day one. In is not clear what the next steps might be (see question 12).	
34.	No comments.	
35.	Yes.	
36.	The decision will require a cost benefit analysis. Setting a high probability is likely to mean that many IORPs will be significantly underfunded, even if some approximate account of employer covenant can be made. In addition, it is not clear what steps might be taken as a result of a higher funding target. Further details are set out in our response to question 12 above.	
37.	A three year period would be more consistent with valuation process more frequently used in mature	

	market such as UK..	
38.	We do not think this is appropriate for IORPs. Most IORPs are much smaller than insurance companies and the work involved in carrying out such calculations would be disproportionate, especially as it is not clear what additional steps might be taken as a consequence of calculating the additional information. In addition, the existence of the Pension Protection Fund in the UK means that the majority of the members' benefits are protected against employer insolvency so adding an SCR would mean either double counting or some extremely complicated and disproportionate calculations, to remove the double counting. In countries such as the UK, an assessment of the scheme's assets against the estimated cost of securing benefits with an insurance company is already made. This would appear to be an appropriate benchmark given that many schemes would secure benefits with an insurer if they were to approach that level of funding.	
39.	A three year period would be more consistent with the valuation process more frequently used in mature market such as UK..	
40.	We prefer the existing structure which allows national regulators to adopt a risk based approach. A minimum funding requirement was used in the UK for several years but this "one size fits all" approach led to problems and was replaced by the more scheme specific regulatory system now in place. Introducing a MCR would appear to be a step backwards.	
41.	IWe would support option 3, a reduced SCR to reflect the protection. In particular, we suggest the SCR be reduced to zero, for simplicity. It is not otherwise clear to us how the protection could be incorporated into calculations in a proportionate way.	
42.	Such a requirement would create an inconsistency between trust and contract based arrangements. Operational risk could be valued, in some way, and offset against a calculated employer covenant but the costs of carrying out such an exercise would appear to be disproportionate to any benefit.	
43.	Article 136 requires continuous monitoring of financial conditions and immediate notification to the regulator. This seems completely disproportionate for most IORPs, particularly because the steps which might flow from such monitoring are unclear (see our response to question 12 above). The regular cycle of annual actuarial reports (or full valuations) seems a more appropriate requirement.	
44.	The timescales set out in Articles 138 and 139 seem extremely onerous, in particular a need to continuous monitoring and submission of a recovery plan within 2 (or 1) months of any shortfall	

	being notified. In the UK IORPs are only required to carry out a valuation every 3 years and submit a recovery plan within 15 months of the effective date. A cost benefit analysis would be needed to assess whether significantly more onerous requirements could be justified. Recovery plans must be very flexible to reflect individual scheme and sponsor circumstances. In many cases the sponsor will already be paying as much as they can reasonably afford and requiring higher contributions could put sponsors out of business. This does not appear to be in anyone's interests.	
45.	No comment.	
46.	If the requirements were specified they would differ significantly from those of insurance companies. For example in the UK, the key content would be the contributions to be paid, the allowance for additional returns in excess of those allowed for in the calculation of technical provisions, and the recovery period.	
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55.	Requiring the same stress tests for IORPs as for insurers may not be proportionate, particularly for smaller IORPs.	
56.	Penalties applied to IORPs may hurt only the IORPs beneficiaries. They are not run for profit, and do not have shareholder capital to absorb any penalties.	
57.	See Q 55, 56.	
58.	See Q 55, 56.	
59.		
60.		
61.		

| 62. | | |
| 63. | We support the principle of improving the general governance requirements for IORPs and to have written policies on a range of critical aspects provided that due account is taken of:

• The heterogeneity of these institutions that limit the scope of a one-size-fits all solution;
• The adequate application of the proportionality principle given the small size of many IORPS. Under the current Directive, Member States are allowed to exclude "small" IORPS (less than 100 members) from some of the supervisory/reporting requirements, but this approach may not be appropriate in any new regime given the focus on risk management. "Small" IORPs satisfy one of the three criteria set out in Article 41 (2) of the Solvency II Framework Directive for the exercise of proportionality ("scale") but not necessarily the other two – "nature" and "complexity".
• The fact that many IORPS (and in practice almost all medium/small IORPS) outsource all of their functions to third parties.
• The fact that most IORPS do not employ or remunerate management or staff. Those responsible for the management of the IORP are often volunteers who often receive just a reimbursement for expenses.

We agree that Article 41 of the Solvency II Framework Directive should be amended to:

• Permit (but not require) member representation in the management of the IORP. Furthermore, member representation should not be considered per se as a qualification for better governance.
• Require the legal separation between IORP and sponsoring employer.
• Provide for "regular" rather than "annual" reviews of written policies, which will continue to be required on asset management issues (i.e. Statement of Investment Policy Principles), and on internal control, internal audit and outsourcing. It should be made clear that such policies must be approved by the "management body" of the IORP – not by the supervisory authority.

We do not see an opportunity to apply mutatis mutandis – the concept of "contingency plans" as required under Article 41(4) and the principle of "sound remuneration policy" being developed under Solvency II -- to IORPs. It is not common for an IORP to have explicit contingency plans although the outsourced functions will have these generally addressed in the contract with third parties. Most IORPS do not employ or remunerate management or staff, which are either: employees of the | |

	sponsor, or volunteers, or third parties who charge fees on the basis of services provided. It is not clear if the reference to remuneration policy is intended to include fees or charges paid to outsourced functions. In practice the IORP management will/should endeavour to get value for money when making such appointments. Consideration should be given also to the need for a clear separation of the Fund Manager and the Custodian.	
64.		
65.	We are very concerned about the effect of this proposal. In particular, the likely negative impact on representation by Member Nominated Trustees. Providing each jurisdiction can establish its own interpretation of "fit and proper" we support the recommendation that these requirements be applied to the management board and key function holders, many of whom will in practice be outsourced functions and may be required to meet "fit and proper" criteria in order to offer the services. The decision as to whether a member of the management board meets the criteria may be subject to pre-approval and on-going monitoring by the supervisory authority to ensure that they remain "fit and proper" at all times, and to take action if and when they find that this is not the case. The mutual recognition among supervisory authorities of proofs of good repute should be ensured.	
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73.	We support the view and principles proposed for having in place effective internal control system and the opportunity to outsource such. However the mandatory requirement for the appointment of a compliance officer may constitute an over burden and additional cost for those countries where there	

	is an obligation of duty rather than of a dedicated resource/function. Additionally, the risk measurement mechanisms to be followed by Fund Managers could be set out in the investment policy mandate provided by the Board. Due consideration should also be given to the need for periodical investment policy review to be carried out prospectively and not only retrospectively.	
74.	No. Regarding internal audit the principle of proportionality has to be taken into consideration. The mandatory introduction of internal audit can be very cumbersome for many smaller pension plans and over the longer term may make increasingly unsustainable to operate small plans. It is difficult to see how the requirement to appoint an internal auditor could be applied proportionately to smaller IORPs.	
75.		
76.	We agree with the analysis as set out in 24.3.1 to 24.3.28. In particular: • the "actuarial function" should perform the role currently undertaken for IORPs by the actuary (or similar qualified specialist) referenced in Articles 9 and 15 of the IORP Directive i.e. compute and certify the technical provisions • on grounds of cost, the Directive should not require an IORP to have two separate functions to compute and to certify the technical provisions (although member States could impose this additional requirement) • the actuarial function can be an internal or an external (out-sourced) appointment • the definition of the actuarial function should be sufficiently flexible to deal with the wide variety of IORPs in Member States • an actuarial function should be required for all IORPs which bear biometric or investment risk i.e. all but "pure DC" schemes, although actuaries can perform other tasks in such schemes e.g. advice on investment options, member communications	
77.	The list set out in Article 48(1) is appropriate with the amendments suggested in relation to • underwriting policy • reinsurance as these issues may not arise in many IORPs.	

	We agree that the actuarial function should have whistle-blowing responsibility to the Board of the IORP and to the supervisory body. We strongly support the inclusion of the reference as in Article 48(1)(j) in relation to contributing to the risk management function. We agree with the comment in 24.3.16 that the actuarial function should be required to advise on the adequacy of future expected contributions to meet the benefits to be provided for future service, or where the IORP is established on a "balance of cost" basis, to recommend contribution rates to support the future accrual of benefits.	
78.	We strongly support the view set out in 24.3.24 that the actuarial function should provide competent, appropriate and independent advice to the IORP. We agree that the actuarial function should have "operational independence" so that it can discharge its duties objectively without being inappropriately influenced, constrained or controlled by the IORP, the sponsoring employers or other stakeholders in the IORP, in relation to the data used or the methods or assumptions adopted in undertaking its work, and without any conflict of interests. The framework within which the actuarial function operates may differ from IORP to IORP, but there should in all cases be appropriate safeguards against the independence of the function (and the advice provided) becoming prejudiced. We agree that the actuarial function should be subject to fit and proper requirements.	
79.	We agree with the analysis and options as laid out, and support Option 2. We agree that this should not have a major cost impact as IORPs are already required to have an actuary (or similar qualified specialist) to compute and certify the technical provisions.	
80.	We support the proposed principles and the need for an outsource provider to cooperate with an	

	Authority, to provide access to necessary information to retain status, and to be open for on-site access if and when required. We would also like to see some agreed minimum standards for what an outsourced provider needs to meet to qualify as a service-provider. We agree the IORP should be ultimately responsible, although a registration/certification process for providers meeting minimum standards for all states would help the selection process by IORPs and sponsor undertaking. The focus then becomes on due diligence in the selection process: verification, selection, ongoing monitoring. Seeking clearance prior or post an outsourcing event would be less of an issue if the provider were certified. Under "Chain outsourcing", there is a need to clarify to which extent delegated investment services would be considered as such an activity. We support the principles proposed by EIOPA and in particular that: • The IORP must retain ultimate responsibility, • The existing provisions of the IORP Directive that give Member States the right to make compulsory the appointment of a custodian/depositary, and permit the appointment of investment managers or custodians from another Member State • There must be a written outsourcing agreement • Where IORPS are authorised by the regulatory authority, the IORP must seek approval in advance for outsourcing critical functions or activities (the definition of such activities could also be specified at level 2 measures) A written policy on outsourcing is a good feature and for investment it should form part of the Investment Policy statement.	
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-	Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation	Deadline 02.01.2012 18:00 CET
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