<table>
<tr><td colspan="2">Comments Template on EIOPA-CP-11/006
Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</td><td>Deadline
02.01.2012
18:00 CET</td></tr>
<tr><td>Company name:</td><td colspan="2">Zusatzversorgungskasse des Baugewerbes AG
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<tr><td>Disclosure of comments:</td><td>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.</td><td>Public</td></tr>
<tr><td></td><td colspan="2">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).</td></tr>
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Question	Comment	
General comment	Zusatzversorgungskasse des Baugewerbes AG; (further on 'ZVK-Bau') operates as modern service provider to meet the needs of employers and workers in the German construction industry regarding occupational pensions. The supplementary pension fund for the construction industry in the former West-German "Länder" was established as joint body of the employer associations and trade unions which represent employers and workers in the construction industry. Founded more than 50 years ago and now with a balance sheet total in excess of EUR 3.3bn, some 550.000 insured workers and approximately 430.000 pensioners receive benefits from the fund. During the years ZVK-Bau has grown to become the largest second pillar pension fund in Germany in terms of members and beneficiaries. Following the general intention of the European Commission - as can be seen through the different questions within the Call for Advice that concentrate around the application of Solvency II - would endanger the existence of our fund. Especially the Pillars I and III of Solvency II do not fit as demonstrated below. Indeed, when new solvency requirements are imposed upon us, they increase the up front financing cost for our scheme's sponsors – the completeness of construction industry's employers - in a way that they might try to avoid those costs by almost all means. Multiemployer DB schemes based on collective agreements that include solidarity elements like ours have to be treated very differently from individual insurance solutions.	
1.	We regard this to be a question of highly political nature therefore we refrain from answering it.	
2.	We refer to our answer on question 1.	

3.	We refer to our answer on question 1.	
4.	We refer to our answer on question 1.	
5.	We refer to our answer on question 1.	
6.	We agree on Option 1.	
7.	Because there are positive (protection) as well as negative effects (costs and administrative handling) of ring fencing and the definiton and terms are not quite clear, ring fencing should play a role during the impact assessments.	
8.	We think that it should be up to the member states to rule on ring fencing.	
9.	Privilege rules in systems where the completeness of employers of a whole industry is the ultimate guarantor are unnecessary.	
10.	We agree.	
11.	We believe the impact analysis of EIOPA to be complete.	
12.	We strongly reject Solvency II like quantitative capital requirements for IORPs. However, if the commission would not refrain from imposing capital requirements on all types of IORPs, we would like to understand the full consequence of the holistic approach as the possibility to completely replace quantitative capital requirements by qualitative elements or risk-mitigation techniques.	

	As industry-wide multiemployer pension fund where all employers ensure the pension promises of the whole construction industry we reject the idea of valuing each individual sponsor guarantee, pension protection systems or possibilities to make benefits conditional in an explicit quantitative way (monetary terms). In the end all these complicated and unforeseeable artificial calculations are highly costly and end in speculation without real value. We invite EIOPA to consider a qualitative approach rather than a quantitative balance sheet concept. We would therefore prefer the concept of 'holistic approach' instead of 'holistic balance sheet'. We invite EIOPA to make the impact assessment of the holistic approach and consider the different forms of IORPs like industry-wide multiemployer pension funds based on collective agreements without individual pension accounts while doing so.	
13.	We consider the "market-value"-accounting of assets to be inappropriate for IORPs. It brings considerable volatility within the balance sheet. Combined with the necessity of meeting the Solvency Capital Requirements at all times, IORPs become very vulnerable to (irrational) market behaviours. Instead of being stable, sometimes anti-cyclical investors, that stabilize financial markets, IORPs are forced to follow trends therefore fuelling eventual irrationalities of capital markets. They had to adjust contribution rates swiftly and sometimes beyond economic means if market developments work unfavourably against them. Art. 75 implies – like in all fair-value accounting – that markets exist. This is neither true for all assets nor for pension liabilities. Any assets that are held to maturity in order to cover liabilities shouldn't necessarily be valued on a mark-to-market basis. Instead IORPs should have the option to value them on book value. If the whole financial industry turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil, creating procyclical behavior. This creates a huge systemic risk.	

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	A quantitative impact study and impact assessment seems essential before making any decision at level 1.	
14.	We agree with option 1. Reference to transfer value is not appropriate But we want to stress that a mark-to-market approach for pension liabilities is inappropriate either. First of all, pension liabilities of a industry wide multiemployer pension fonds with solidarity elements based on collective equivalence like the ones of ZVK-Bau cannot be transferred into other structures or to insurance companies without completely destroying the scheme's unique design. Secondly, even for other liability structures there are almost no markets for pension liabilities in continental Europe currently. All liabilities have to be marked against a certain model. But even the asset side suffers under fair value accounting: pension liabilities are very long-lasting. The average duration of our pension fund's liabilities exceed 20 years. To replicate these liabilities with an assets portfolio that matches the liability structure, huge parts of the assets must have durations longer then 15, 20 or even 30 years. There are almost no fixed income assets with this duration available on the capital markets. IORP's are unable to achieve a matched asset liability structure. Therefore the high duration of the liability side with the asset liability mismatch drives risk and volatility of the IORP's P&L. Furthermore systemic risk might emerge if the whole financial industry turns to risk based supervision using the same type of harmonised standards. If everyone might be forced to move in the same direction in periods of turmoil this creates procyclical behavior.	
15.	We believe that taking into account the specific structure and functioning of IORP's is far more important than the own credit standing of IORPs. This is obvious with industry-wide multiemployer pension funds like ZVK-Bau, where all employers share the pension promises given to all employees of the industry.	
16.	We believe that current IAS / IFRS regulation is unfit to form the basis of a solvency regime for IORPs. IORPs do not compete for investor's money and there is therefore no need to use investor	

	related accounting rules like IAS / IFRS. IORPs should use accounting rules based on prudence and with averaging mechanisms, at least when it comes to solvency needs. For industry-wide operating IORPs and their sponsoring companies no international accounting rules exist that seem to be applicable. Liability figures for each sponsoring company cannot be provided in schemes which are calculated via "collective equivalence" and partly funded / partly PAYG. Therefore we prefer option 1.	
17.	We reject the idea of imposing capital requirements based on mark-to market valuation of liabilities. However if the commission would go through with this idea, we would like to give the following comment on art. 76: 76(5) refers to art. 77. It contains the risk-free interest rate term structure and other elements that we reject. The term 'obligations' is not the right term for hybrid schemes. We suggest to use instead the wording 'current benefits'.	
18.	We reject the idea of imposing capital requirements by asking for a risk margin. Regarding the special situation of industry-wide pension funds with solidarity elements we cannot imagine any market for this kind of liabilities. The idea of a risk margin is based on a transfer of liabilities to another entity that takes over the operations. Since any transfer of that kind would destroy the unique situation of the employers-beneficiaries-partnership of these pension funds, there will be no transfers like in the insurance industry. Therefore we prefer option 3. Only when there are in the member states no regulated own funds, option 1 is valid, an explicit risk margin to cover adverse deviations from assumptions.	

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19.	IORPs should not be obliged to take future accruals into account in their calculations, but they should be allowed to take them into account if their actuarial method chosen is based on the principle of (collective) equivalence.	
20.	We agree.	
21.	We disagree with both options, because we share EIOPA's analysis in 9.3.69. We would like to bring option 1 back on the table. The negative impacts for options 2 and 3 are far more important.	
22.	We agree.	
23.	We believe that pure discretional benefits should not be included in the technical provisions (9.3.123).	
24.	We agree that contractual options should be disclosed in the value of the technical provisions.	
25.	We favour option 2. Splitting the technical provisions into homogeneous risk groups should be left as an option.	
26.	We support option 1.	
27.	We agree.	
28.	We agree.	
29.	We agree.	
30.	Sometimes national tax law does not allow pension funds to raise the amount of technical provisions without risking ther tax-free status. This problem should be solved before obliging pension funds to do so upon request by supervisors. Furthermore any rise of technical provisions has to be ordered with due consideration concerning amount and time. Otherwise the sponsor(s) could get damaged.	
31.	Many quantative impact studies within Solvency II showed that the most important burden derives	

	from the calculation of technical provisions, especially from the design of the risk free discount curve. These are aspects whose details are fixed on level 2 within the Solvency II development. The most important aspects that decide about the future of the pension fund industry must however be decided on level 1. We are worried because the technical measures regarding the holistic approach are part of level 2, and are not yet known. They can have far reaching consequences. We therefore urge to do more than one quantitative and qualitative impact study, before taking any binding decision on level 1.	
32.	We support option 1: Art. 15 (5) of the current IORP directive should be retained due to the fact that all other methodologies presented by the application of an inappropriate regulatory framework like Solvency II do not achieve a harmonized level of security neither.	
33.	We are concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. There should be more simple methods to allow for taking sponsor support into account, not in monetary terms. We fear that this might lead to an obligation to recognise the same amount in the sponsors balance sheet. Within the structure of an industry-wide pension fund like ours this can not be handled. There are no individual accounts, neither for employers nor for beneficiaries regarding accrued benefits or liabilities. They are even impossible because 90 % of all employers within our pension fund have less than 10 employees. There are only two of 70.000 employers that are registered at a stock exchange. These specificities of industry-wide IORPs based on collective agreement, for instance a large number of sponsoring employers, as well as the feasibility of some IORPs to combine increases in contributions and subsidiary liability forms of sponsor support have to be recognised in a proportionate way. However if EIOPA insists on the holistic balance sheet approach we prefer to value all forms of	

	sponsor support as reduction of technical provisions. They might be valued similar to premium adjustment clauses from (SLT) health insurances. The impact of the risks (e.g. life underwriting risk and/or interest risk) should be limited to a certain time frame (e.g. 3 years) as the sponsor support will compensate for the risks after that time frame. Even the time frame might only be necessary as an assessment and reaction interval.	
34.	Taking the aim of the three tier system into account - to cluster different levels of security (SCR / MCR) by applying different kinds of own funds - we find the whole approach artificial. Usually IORP's do not provide of tier 2 or tier 3 capital. The sponsor covenant - provided on legal or contractual basis - is sufficient. We therefore do not welcome the application of Articles 87-99 of Solvency II to IORPs. However, if it would be decided to apply the concept of own funds to IORP's, the Solvency II rules should at least be altered to take the specificities of IORP's into account.	
35.	We think that subordinated loans from employers to the IORP should be allowed. They might however only be possible in cases of temporarily problematic, but going concern situations.	
36.	We regard an uniform security level as almost impossible to achieve. The diversity and complexity of pension schemes throughout Europe is such that national supervisors need to have leeway to judge and rule specifically. We do not find that leeway within the standard formulas of Solvency II.	
37.	We oppose the implementation of capital requirements based on value-at-risk calculations. However if the commission would go through with this idea, we would like to give the following comment: If a value at risk oriented calculation for capital requirements is chosen - which we think is inappropriate for pension funds - we agree that a one-year time horizon is sufficient.	

38.	We still question why EIOPA does insist on capital requirements for IORPs. Their security mechanisms evolved over a long time, led them through more than one financial crisis, are constructed in a sustainable way and work for much longer periods. We regard the fact that on one side EIOPA thinks that pension funds are much more complex and diverse than insurance companies - which under Solvency II would unevitably lead to the need for a specific internal model because the standard model does not fit - and on the other side admits that almost none of the pension funds are able to develop and use an internal model due to their limited administrative capacity proves the inadequacy of Solvency II-rules for IORPs.	
39.	We oppose the implementation of capital requirements based on Value-at-Risk calculations. However if the commission would go through with this idea, we would like to give the following comment: We agree to the analysis of EIOPA that a yearly assessment is very costly. Therefore we believe that all calculations can be done at least on a three-yearly basis, at the discretion of member states but with application of an one-year-horizon as requested in the answer to question 37.	
40.	We regard the idea of imposing minimum capital requirements as completely inappropriate for IORPs. Furthermore nothing will be gained by making the MCR dependent on the SCR, as it is the case in Solvency II. The aim of a MCR calculation under Solvency II is to blow a whistle if an insurance company's insolvency is to expect shortly. Then the supervisor might close the company for new business and starts to transfer assets and liabilities to another insurance company. This is different for IORPs. There are sponsor guarantees and the possibility for benefit adjustments. Winding up the IORP would not help the members or beneficiaries especially if the scheme contains solidarity elements that cannot be transferred to another pension fund or insurance company.	

	Therefore we suggest option 1 regarding the existence of MCR (10.3.102).	
41.	A pension protection scheme is an instrument to provide pension security. In a holistic approach all available security mechanisms should be included. Any holistic approach has to judge the contents and effects of security mechanisms and not only their formal (non-) existence. Therefore we like to stress that industry-wide multiemployer pension funds in which liabilities are shared by a large number of employers have similar effects on the sponsor support's security as a pension protection system. Our fund handles around 5000-7000 employer insolvencies every year without any harm to beneficiaries due to the solidarity based construction of the scheme. The effects of the IORP's scheme design offset the necessity of a pension protection system.	
42.	We support option 3. We find it sensible to distinguish between DC and other types of schemes since the security mechanisms discussed above (i.e. sponsor guarantee) covers operational risk as well as all other kinds of risk.	
43.	Except from the general provision in Article 136 all following articles do not reflect the situation of IORPs where sponsors or participants bear the risk and should not find access in any regulatory framework for IORPs.	
44.	The provision within IORP I (Article 16) seems to reflect better the situation than the provision within the Solvency II regime. This is especially true regarding the recovery periods.	
45.	Prohibiting the free disposal of the assets within an IORP should be limited to extreme cases of mismanagement which in principle should be at first adressed by the fit and proper regulation. There is no conflict of interest between sponsors and members / beneficiaries. Especially if sponsors guarantee the ultimate benefits, there is no risk arising for beneficiaries. If the deterioration of assets or the financial situation as a whole was caused by market conditions or biometrical risk, supervisory	

	actions can only be the same as management actions: raise contributions, lower accrued rights or benefits.	
46.	The effects of risk mitigating mechanisms of each pension scheme demand a holistic assessment of the need for recovery plans. IORP II must provide new definitions for the triggers of recovery plans. The content must be amended: instead of an assessment of reinsurance the assessibility and effects of the pension scheme's risk mitigating mechanisms have to be assessed. Article 142 of Solvency II is therefore not appropriate. Estimates of management expenses and estimates of income and expenditure in respect of direct business are not relevant for an IORP.	
47.	We believe that especially for IORPs operated or controlled by social partners or representatives of the members and beneficiaries the prudent person principle is a sufficient basis. These IORPs are not for profit institutions providing social protection to their beneficiaries. Their control structure and objective, combined with good governance rules and the obligation to invest all assets in the best interests of the members and beneficiaries, constitute a strong mechanism to make sure that investments are done in a sound way.	
48.	As demonstrated before in our answer to question 47 we believe that especially for IORPs operated or controlled by social partners or representatives of the members and beneficiaries the prudent person principle needs no amendment by imposing limitations on investments except for maybe limiting investments in the sponsor company.	
49.	Different investment rules for defined benefit and defined contribution schemes do not seem necessary. The prudent person principle should be the basis for all types of schemes.	

50.	Investment rules and restrictions are pre-emptive controls to ensure prudent and careful investment behaviour. They are common for a very long time in many European countries and form the basis of their rules-based supervisory systems. A choice has to be made between a security system based on principles and one based on rules. A hybrid system with both elements must be balanced very carefully. Otherwise it tends to be overprotective and could cause heavy costs for fulfilling the principle-based security system without having the means to invest in high-return assets to earn these costs. If member states decide to impose investment rules as a pre-emptive control, the risk mitigating effects of these controls have to be taken into account within the holistic approach.	
51.	We agree that borrowing should only be allowed when it is used for risk management purposes and for hedging of liabilities. Subordinated loans should be exempted from the prohibition of borrowing.	
52.	We agree to the inclusion of Article 27 of the Solvency II directive within the IORP II directive only after the following amendment: supervisors should explicitly take the spnsor's sustainability and the adequacy of accrued rights and pension benefits into account. Without these aims adequacy and sponsor's fitness might easily be sacrificed on the “altar of security". Procyclicality is an unwelcome result of a regime like Solvency II. Instead of adjusting it in the wake of this regime and fiddling about the supervisory control mechanisms that follow from it, a solvency regime for pension funds should be created differently. It should avoid any adjustments that could become necessary because the system was designed without recognising the special stabilizing role pension funds play at the capital markets even in normal times and especially in times of distress. EIOPA should investigate how suspending mark-to-market valuation of important parts of the asset portfolio and /or the liabilities could help avoiding procyclicality. IAS / IFRS accounting allows for a	

	"hold-to-maturity" part of the portfolio that has not to be marked-to-market but remains stable. Coming back to the completeness of valuation rules instead of leaving important elements out of the equation could mitigate important weaknesses of Solvency II better than artificial constructions like the equity dampener within art. 106 or the duration dampener within art. 304 and even the Ultimate Forward Rate. If this choice EIOPA does not seem applicable it has to provide the above mentioned artificially constructed dampeners and instruments to provide second-best easing mechanisms.	
53.	We agree that some material elements of supervision, transparency and accountability should also apply to IORPs. But the way to achieve these ultimate aims cannot be the same like that for insurance companies.	
54.	EIOPA has correctly assessed the impact of an adoption of the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability to IORPs. Concerning the transparency rules we would like EIOPA to take potential additional burdens for IORPs stemming from supervisor curiosity into account. These should be limited because every excessive transparency could diminish the value of the pension scheme.	
55.	We think that supervisors have already the power to ask for stress tests under the current IORP directive. Due to the diversity of IORPs it is important that if a supervisor considers it necessary to have a stress test conducted by the IORP, this should be a tailor-made stress test wich takes into account the particular characteristics of an IORP as well as the principle of proportionality.	
56.	We believe that the current IORP I regime is sufficient to provide a sanctions regime.	

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57.	We propose to react according to the situation: First time offenders should not made public. Repeat offenders within a given timeframe should be treated proportionally, this may also contain public disclosure.	
58.	We do not believe that giving host state supervisors the power to impose sanctions without going through the home state would promote cross border IORPs as is the intention of the directive.	
59.	We support a supervisory review process for IORPs if the model in place that has to be reviewed differs significantly from the one applicable to insurance companies under Solvency II. IORPs need a proper supervisory review process that takes their specificities, diversity and their own characteristics as well as the proportionality principle into account.	
60.	Capital charges do not improve the situation of IORPs nor are they incentive to avoid supervisory actions. Capital charges only add costs. In insurance companies add-ons are (ultimately) paid by the shareholders. An add-on in case of an IORP would ultimately be paid by the plan members and the beneficiaries because there are no shareholders like in insurance companies. This would hamper the protection of members and beneficiaries. Therefore we reject the idea of imposing capital add-on requirements on IORPs similar to those applicable to insurers.	
61.	We agree that the material elements of Article 38 (1) of the Solvency Directive in respect of supervision of outsourcing should apply also to IORPs, but under strict consideration of the proportionality principle.	
62.	We support EIOPA's proposals concerning changes to the definition of home state and rules on chain outsourcing.	

63.	We agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality. We would like EIOPA to conduct an impact assessment in order to gain knowledge of the real impact of the new requirements. We would like to invite EIOPA to consider a longer-lasting transition period when implementing the new rules.	
64.	EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements. A proper impact assessment regarding the efficiency and the effectiveness of such new governance rules to IORPs seems necessary.	
65.	EIOPA should reconsider its proposal that the same ‘fit and proper’ requirements have to be applied as for insurance and reinsurance undertakings in Art. 42 (1) of the Solvency II Framework Directive We agree that persons who direct the IORP have to possess an adequate professional qualification, knowledge and experience (“fit�‟), and must be of good repute and integrity (“proper‟). We agree that a pension provider has to have sufficient knowledge, must be reliable and apt to fulfil his/her tasks. A number of principles should however be taken into account : • The requirements have to be linked to the nature and the content of the pension schemes managed, and the complexity of the activities and the investments. • Professional qualification, knowledge and experience may be acquired by representing the members and beneficiaries of pension schemes. Otherwise no representatives of trade unions or employer associations could acquire functions within paritarian organisations like ZVK-Bau any more, which would be the end of the paritarian idea.	

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	• Fitness of non-executive board members or members of a supervisory board should be easier to gain than fitness of executive board members. • The “fit” rule (knowledge and experience) should be applied at the level of the board, which should have the necessary qualification, knowledge and experience as a whole. • “Key functions” should be defined on level 1. It should be clarified that the amount of key functions and separation of duties depends on the size and complexity of the IORPs operations. Furthermore the qualitative requirements of key personnel should not prevent IORP to establish these kinds of position. Taking these into account, we think that the current Art. 9 of the IORP Directive can be amended. A proper impact assessment seems necessary to validate that these requirements are proportional towards different types of IORP.	
66.	Under the condition that the proportionality rules will be applied properly, we agree. ‘Fit and proper requirements’ should apply at all times and effective procedures and controls should exist to enable supervisory authorities to assess fitness and propriety.	
67.	Experience shows that today supervisors have all the powers needed to react accordingly if they think that fit and/or proper requirements are not fulfilled or not fulfilled anymore. Therefore we do not see the need for amendment of any legislation.	
68.	All IORPs should have an effective risk management system but as the nature of the risks, the size of IORPs and its complexity might differ, the qualitative measures and requirements should be in	

	proportion to the risk profile of the IORP. An appropriate period of transition will be needed, in order not to have a negative impact on the operations and / or financial situation.	
69.	We agree with the principle that IORPs have to face all risks and to protect themselves. ORSA can be a tool to get that overview. But the same function provides a proper risk management process taking into account long period trends. In any case ORSA should be applied proportionately to the nature, size and complexity of IORPs. Especially the prospective nature of ORSA seems to make it an useful part of pillar 2. But there are two aspects that we like to stress concerning ORSA: 1. Art. 45 (1) deals with capital requirement almost only. This is inappropriate for pension funds that do not bear the risks alone (as mentioned above more than once). This subparagraph cannot be transferred to IORP II. 2. Since ORSA is a time-consuming and ressource-intensive process and the security mechanisms of IORPs very often consist in a variety of legal and contractual constructions ORSA should be divided in a full assessment, done maybe on a 3-year-timeframe and a lighter assessment based on the more volatile aspects of security, e.g. liquidity calculations, done on a yearly basis.	
70.	Based on the conditions as presented within answer 69 the scope should be the same. The impact will consist of additional costs. Charging IORPs of costs that are not useful without any real return in terms of security and efficiency must be avoided. Therefore the proportionality principle must be applied appropriately.	

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71.	We refer to our answer on question 69. Concerning ORSA we cannot see any differences between a security regime that would be based on the holistic approach or one that is not.	
72.	We reject the idea of a whistle blowing duty of the compliance function, because this would create a potential conflict of interest and impede the advisory role the compliance function has towards the Board of the IORP.	
73.	We agree that the compliance function should include all legislation relevant for IORP's.	
74.	Internal Audit Requirements could be applied to IORP's, respecting the proportionality principle and with an appropriate period of transition. The level 2 implementing measures should take the International Standards for the Professional Practice of Internal Auditing provided by the Institute of Internal Auditors (IIA) into account.	
75.	We do not think that whistle-blowing should be the duty of the internal auditor, because this would create a potential conflict of interest and impede the advisory role the internal auditor has towards the Executive Board of the IORP.	
76.	We agree with the analysis of EIOPA, especially with 24.5.4. We have no objections or comments regarding the application of art. 48 of Directive 2009/138/EC, although not all of the tasks are applicable to IORPs.	
77.	We agree with the importance of independence of the actuarial function.	

78.	We recognise the importance of the independence of the actuarial function. Conflicts of interests must be avoided in order to have high standards on protection level and of avoidance of operational risk. Therefore the independence of the actuarial function must be clearly defined. The competence to guarantee the operational independence can be left to the member states. If article 48 of Directive 2009/138/EC would be the basis, it needs to be amended accordingly to be applicable for pension funds (e.g. no choice of customers).	
79.	We agree with the preference of EIOPA for option 2. With regard to the whistle-blowing obligation as is asked for under 24.5.7, we refer to what we said about this topic regarding the compliance function and internal audit.	
80.	We think that the starting point should be art. 9 of the IORP directive, respecting the specificities of IORPs, and not the material requirements on insurers in respect of outsourcing.	
81.	We are not convinced that standardization of outsourcing process requirements would stimulate cross border activities.	
82.	Minimum outsourcing contract elements could include: (1) rights & obligations of the service provider and the IORP, (2) confidentiality and security features, (3) timely and accurate reporting and communication of information, (4) commitment of the service provider to grant access to information by the IORP and the supervisor on an ongoing basis, (5) defining of applicable laws and regulations, (6) defining auditing rights (by both the internal and the external auditor and possibly also by the compliance officer), (7) requirement of an internal controls certification (8) possiblity to modify and/or terminate the agreement and obligation for the external service provider to return all necessary data to the IORP and/or to transfer them to another external service provider.	
83.	IORPs are not comparable to AIFM and UCITS. Therefore there is no need for a compulsory	

	appointment of a depositary for IORPs. We propose option 1 to leave the IORP directive unchanged.	
84.	The increase of costs will be translated in higher contributions or lower benefits. In the interest of the participants there is no need for amending the IORP directive regarding this matter.	
85.	We refer to the two previous questions.	
86.	We expect that the costs related to a written contract, the role in terms of safekeeping, a liability regime of the depositary and the oversight functions will be high.	
87.	We refer to our answer on question 83.	
88.	We refer to our answer on question 83.	
89.	We think the analysis of the options identified most of the pros and cons correctly. We like to stress the importance of the extra cost burden, which may have an impact on the pensions.	
90.	We believe that a convergence of provision of information to supervisors may be only interesting in certain fields, maybe systemic risk.	
91.	We would like to stress the fact that pension funds are not for profit organisations that do not compete on a market. The benefits managed by IORPs are not simple products. They are in most cases mandatory because they are part of collective labour agreements in industry sectors, or because they are part of the employment relation between an employer and his employees. In these cases they do not need as many “pre-contractual information” as customers of insurance companies. Even during their membership their information needs are different from insurance clients, because the contributions paid for them by their employers are an unchangeable part of their salary. IORPs	

	should not be obliged to deliver customer information if accrued benefits have not changed during the previous period (i.e. passing year).	
92.	The objective of the KID should be to provide a better understanding of the member of his pension accrual under a DC scheme. The information need will be different according to the type of scheme: collective or individual. It might also be driven by social and labour law requirements, imposing elaborate and specific information requirements.	
93.	We suggest that the directive should not go into too much detail, but rather leave room to member states to regulate further.	
94.	We believe that scheme members should receive ample information on their rights. The information should however be adapted to the type of scheme. If there are no changes in the accrued rights during the previous period, an annual information requirement is only cost consuming but not helpful for the member.	
95.	We agree with EIOPA's analysis not to disclose a report on solvency and financial conditions to the public.	
96.	We believe that the additional information requirements as proposed by EIOPA will indeed lead to additional compliance costs for IORPs and additional supervisory costs for supervisory authorities, which might ultimately be reflected in a charge towards the IORP. We would therefore urge for a proportionality between the additional information requirements and the additional costs they would lead to. Impact assessments should reveal the amount of costs before any decisions about the information requirements are taken.	