

Summary of Comments on Consultation Paper: Response to the Call for Advice on the review of the IORP Directive 2003/41/EC: second consultation - EIOPA-CP-11/006-

EIOPA-BoS-12/016

General Comments

15 February 2012

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

No.	Name	Reference	Comment	Resolution
0.	OPSG	General Comment	<ul style="list-style-type: none"> • The OPSG would like to point out that the Stakeholders and EIOPA cannot deliver thorough and comprehensive input to the process due to the inadequate time scale. • The primary objective of IORP Review should be to improve the security and sustainability of occupational pensions schemes across the EU taking account of their particular nature and to balance this with the need for efficient management – ensuring effective member outcomes in DC schemes – to allow sponsoring undertakings to continue providing them. • Quantitative impact studies & qualitative impact assessments at every stage of the legislative process of revising the IORP Directive are needed to avoid unintended adverse consequences • The OPSG would like to emphasize the Solvency II Directive should not be the starting point of any modification of the IORP Directive. Instead and in line with EC Call for Advice, the OPSG would like to advocate developing a supervisory regime sui generis, taking the IORP Directive as the starting point, yet accepting the risk-based approach for supervision and management • The sui generis approach seems appropriate since there exist essential differences between IORPs and insurance companies: <ul style="list-style-type: none"> - IORPs – mostly – are not-for-profit institutions – they don't have to remunerate shareholders. - They have a social dimension providing occupational pension schemes that match the 1st pillar pensions which on their own prove to be inadequate to secure old age income. - Occupational schemes provide a wider coverage especially through collective agreements, as opposed to individual voluntary solutions. Such industry-wide pension schemes tend to be administered by IORPs - Other IORPs have no or very few members of staff and the sponsor(s) rely on corporate personnel to manage the scheme There is evidence that IORPs are characterized by great efficiency and by 	<p>Noted.</p> <p>The timescale for the advice is noted in the introductory chapter</p> <p>Each part of the call for advice now includes an impact assessment. The process for a quantitative impact study is now included in the introductory chapter.</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The point about involvement of social partners in the governance of IORPs has been recorded in the introductory chapter</p>

			<p>low internal costs, in particular due to the fact that almost all the employees in a given company or sector are covered. In view of the sustainability and affordability of occupational schemes, these characteristics should not be put at risk.</p> <ul style="list-style-type: none"> - IORPs are funding vehicles where the interests of the scheme's board/management are broadly aligned with the scheme members and beneficiaries. There is generally no conflict over the pursuit of a profit by the scheme at the expense of its members and beneficiaries. - The governance structure of IORPs is characterized by the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer. - Solidarity is often a further core element of occupational pension schemes. Members' contributions are mostly calculated regardless of the age, gender and specific occupational risks. A further element of solidarity is the compulsory participation that prevents participants from leaving the scheme as is the case with individual and voluntary solutions. Other solidarity elements are for example, that pension rights are acquired even during periods with no contributions, such as times of sickness, maternity leave etc. - IORPs have got specific inbuilt security mechanisms that ensure the benefit security of pension schemes. Some pension schemes allow contributions and main benefit parameters to be modified by the employers and the employees' representatives. <p>For DB- and hybrid DB/DC schemes, in at least some Member States, employers have the ultimate responsibility for fulfilling the pension promise. A very important aspect is the long term investment perspective of IORPs since they administer solely pensions. Therefore, long-term developments are more important than the short term distortions which have to be considered under the Solvency II regime.</p> <p><u>General governance requirements (CfA EC n° 13)</u> <u>General comments</u></p>	
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1.	AbA Arbeitsgemeinschaft für betriebliche Altersver	General comment	<p>General Remarks</p> <p>According to the Call for Advice, the European Commission’s pensions policy seeks to “ensure the sustainability of public finances and an adequate retirement income.” The Commission claims that the Single Market “can reduce the cost of financing pensions by allowing for further efficiency gains through scale economies, innovation and diversification.” Finally, the Commission asserts that “the best way for the Single Market to support fiscal sustainability and pension adequacy is through the facilitation of cross-border activity and the development of risk-based supervision.”□</p> <p>Though we agree that the overarching policy objective in the area of pensions is to ensure an adequate retirement income for citizens whilst maintaining the integrity of public finances we disagree with the Commission on the means to achieving this.</p> <p>In view of the fact that necessary pension reforms in many countries means the scaling back of government provision, the foremost priority should be ensuring wide scale coverage of supplementary pensions. Cost efficiency of private provision will be enhanced if it is carried out by IORPs, which are very often non-profit seeking, have lean processes and management structures, and are often subsidized by their corporate sponsors through the provision of staff</p>	<p>Noted.</p> <p>The arguments made below about a high degree of harmonisation being difficult in light of the diversity of pension systems and the role of social and labour law have been recorded in the introductory chapter.</p>

		<p>resources and expertise (HR/Treasury). Enhancing the “user-friendliness” of regulation rather than imposing ever more onerous requirements would be a first step to encouraging more occupational provision. In this sense, any review of the IORP-Directive must be accompanied by a thorough impact assessment which would include the effect on coverage levels of occupational pensions.</p> <p>Scale economies are important but not necessary at the IORP level. A large corporate with a small IORP may achieve the same level of efficiency as a large IORP simply through the bargaining power of the corporate. Large scale consolidation may have the undesirable effect of reducing diversification, thereby increasing the exposure to systemic risk.</p> <p>In any event, it would be socially undesirable if the review of the IORP Directive reinforced the trend to more DC plans.</p> <p>Given the diversity of State pension systems, employment practices and taxation regimes across Europe it is difficult to see how the facilitation of cross-border activity of IORPs could be one of the best ways for the Single Market to support fiscal sustainability and pension adequacy.</p> <p>On the other hand, facilitating the development of risk-based supervision seems a legitimate goal, however, we would argue that the Commission’s aim of achieving “a level of harmonisation where EU legislation does not need additional requirements at the national level” is unnecessary and counter-productive. This notion does not adequately reflect the high degree of diversity of pension systems in Europe and the special role that social and labour law play in protecting members’ interests. Given this situation, it would make sense to maintain the character of the existing IORP Directive as one that sets out minimum standards which can be augmented at the Member State level. For this exercise and as had been announced, the existing IORP Directive should have been taken as a starting point, rather than the Solvency II Directive which addresses different needs and requirements.</p> <p>The Solvency II Directive’s main objective is to strengthen consumer protection in the absence of a third party guarantor or lender of last resort. For IORPs, which are sponsored by an employer, whose stakeholders’ interests are aligned and whose beneficiaries are protected by a web of interacting security</p>	
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		<p>mechanisms in social and labour law, the relevance of Solvency II is questionable. In short, IORPs and insurers play on different fields.</p> <p>Risk-based supervisory regulation yes, risk-based capital requirements no</p> <p>The fundamental premise in the Call for Advice is that supervisory regulation should be risk-based. This concept is extended to imply that capital requirements should also be risk-based. We disagree with this conclusion. We believe that it is possible to adopt risk-based regulation without the necessity to impose risk-based capital requirements.</p> <p>Firstly, occupational pension systems are, in a sense, self-regulating in that it is the sponsor's utmost priority that pension obligations are funded in the long-term and that contributions to the scheme are stable. Consequently the employer has a vital interest in an asset allocation which is adequate in view of the risk structure of the pension liabilities. This is the basic idea of the Asset-Liability management. Companies whose pension costs are unpredictable and erratic are severely punished by the capital markets. It is, therefore, in the employer's interest to ensure that the IORPs risk/return profile leads to stable contributions. This objective translates into a benefit design and asset allocation that precludes excessive risk. In effect, the risk profile of the IORP is calibrated to the risk the sponsor is willing and able to bear (i.e. the sponsor's risk budget). Secondly, Minimum funding requirements, imposed by the regulator, introduce a further element of employee protection. These are inherently risk-based as the probability of having to make up a short-fall is proportionate to the risk of the scheme.</p> <p>Introducing capital requirements that are risk-based (i.e. the higher the risk, the higher the capital requirement) is unnecessary and, we would argue, increase the risk of the scheme and, therefore, the risk to the member. First of all, as outlined above, risky assets already have a "charge" against them in the sense that they consume a higher proportion of the risk budget. Imposing an additional charge is unwarranted and will disproportionately reduce the IORPs incentive to invest in assets which would otherwise provide an attractive long-term return or act as a diversifier of risk. The same applies to liability risk.</p>	
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2.	ABVAKABO FNV	General comment	<p>Since the introduction of the IORP directive in 2005 the EU went through two mayor financial crises. The Dutch pension sector was hit considerably, but stood relatively firm, without the provision of any state support (like was the case with banks and insurance companies). Now the Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP directive explicitly underlines this role and responsibilities of individual member states. Furthermore it only refers to article 18 as subject for review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability debate.</p> <p>We are ready and look forward to cooperate with EIOPA and EC in order to further stimulate pension security. At the same time we want to stress that too much focus on capital requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by shift to individual DC). Taking into consideration the importance which the EC highlighted in its green paper on pensions vis a vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the</p>	<p>Noted.</p> <p>The points that, instead of non-harmonised supervision, it is lack of demand for cross-border schemes and differences between social and labour law which are obstacles have been recorded in the introductory chapter.</p> <p>Also recorded are the points that IORPs are generally run on a not</p>

		<p>individual member states themselves.</p> <p>But, above all we are convinced that consumer protection is paramount and therefor pension security should be based on full transparency and communication with the pension fund member. This means that we suggest to developing and proposing a set of pension system building blocks to the Member States instead of a set of stringent security rules.</p> <p>Also, the Federation of the Dutch Pension Funds (PF) would like to state that we regret that the time for consultation was so short. Even with the postponement of the deadline to the beginning of January, the PF feels that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice mid-February.</p> <p>Furthermore we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1. Need and purpose for revision:</p> <ul style="list-style-type: none"> <input type="checkbox"/> We would like to start with underlining that we see the point on reviewing the IORP Directive, but we are not convinced that an overall revision of the directive is necessary given our following arguments: <ul style="list-style-type: none"> o One of the reasons put forward by the European Commission to revise the current IORP Directive was the fact that pension schemes might exist that currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission, means that this reason is no longer valid. We will come back to this point in our answers on the scope. o Another major reason to revise the current Directive was the stimulation of cross border activity. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand, rather than stemming from non-harmonised supervision. Also, major differences in social and Labour law and social security (i.e. first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefore conclude that this second reason to revise the IORP Directive is highly disputable . o The only plausible reason remaining for a revision in order to establish 	<p>for profit basis, and that the liabilities of IORPs are typically of longer duration than insurers.</p>
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			<p>and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist..</p> <ul style="list-style-type: none"> <input type="checkbox"/> Holistic balance sheet <ul style="list-style-type: none"> o The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed. o Consideration can be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool. o The answers in this response are formulated in case the European Commission decides to go through with harmonisation and the introduction of an holistic balance sheet. The fact that specific answers are formulated should not be considered a justification of the review in itself. 	
3.	AEIP	General comment	<ol style="list-style-type: none"> 1. AEIP regrets that the consultation period is taking place on such a short time frame. Therefore AEIP might return with further comments on some of the issues at a later stage. 2. AEIP is also worried about the short time frame that EIOPA allow itself for analysing the answers to the consultation, and for drawing conclusions out of them. 3. 2. AEIP stresses that sometimes answers are formulated on specific questions, even when AEIP disagrees on the principle or option that is proposed. 3. Level playing field between operators is often brought forward as one of the objectives that should be achieved. In most member states, IORP's are not-for profit institutions established by employers or social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). They have a fundamentally different activity than a commercial undertaking, and should therefore not be treated in the same way. 	<p>Noted.</p> <p>The point that IORPS are not for profit institutions in most member states has been recorded in the introductory chapter.</p> <p>The point that there is no need for a level playing field has been recorded in the introductory chapter.</p> <p>The point on tax issues recorded in the introductory chapter.</p>

		<p>4. 4. Following all of EIOPA's proposals would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financing cost for the scheme's sponsor(s). When the possibility exists to avoid those costs by using an insurance solution, even when it means more risk, they might be tempted to do so.</p> <p>5. In several member states pension schemes can be managed by insurance companies through unit-linked products (thus without any guarantee from the insurance company). The corresponding assets are on the balance sheet of the insurance company and are not subject to any solvency requirement (besides a 1% margin for covering the administration risk) since the insurance company doesn't take any financial risk. Although fully comparable to sponsor-backed IORP's in terms of risk sharing that solution would enjoy a huge competitive advantage if sponsor-backed IORP's would be subjected to the holistic balance sheet approach</p> <p>6. 5. Review of the IORP directive can not be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of political nature.</p> <p>7. Pension policy and social protection policy are different from consumers policies. In a large number of member states, pension benefits come mainly from schemes embedded in national law. Complementary schemes are in most cases compulsory as a part of the national labour law or collective labour agreements. Therefore they are not involved into any level playing field and do not compete with each other or with other providers⁶. The goal of the regulation should consist in facilitating the existence of good pension schemes for the European workers and citizens. In a number of member states pension schemes exist since a long time. They are regulated and function well, and can prove a track record in delivering pensions. The aim of the directive should not be to bring new regulation to systems that function well in member states that have already a sound regulation in place.</p> <p>8. 7. AEIP is convinced that the weak success of cross border pensions is not a sufficient justification for such a deep review of the content of the IORP</p>	
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		<p>directive. The barriers for the setup of a cross border activity are not only of prudential nature. They have to deal also with tax issues, resistance of local stakeholders, costs for managing a complex legal environment, and possibly also a basic lack of demand since cross border economies of scale on the asset management side can also be achieved by other means.</p> <p>9. 8. The directive takes the single market as starting point. It must however take the social aspect of pensions fully into account, as they are part of the European social model. Regulation of pensions might not result in a situation whereby employers become discouraged to provide occupational pensions because of the cost/risk balance. AEIP believes that strong collective occupational pensions are superior to individual pension solutions, both from an economical as a social perspective. Pensions should continue to be considered as part of labour agreements. Collective schemes instaurated and managed by social partners have a proven long term track record.</p> <p>10. 9. The EIOPA text deals a lot with consumer protection. AEIP believes that this starts from a wrong assumption. Starting from false premises leads to wrong conclusions.</p> <p>11. Startig from a consumer protection idea assumes that pension funds are commercial operators providing a product, and scheme members are consumers of this product. The benefits managed by pension funds are not like that. 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 en employer and his employees. They are as such not consumer products that are consumed.</p> <p>12. AEIP rejects the approach that collective pension scheme members are to be considered as consumers only.</p> <p>13. 10. The basis for the review of the IORP Directive should be the IORP Directive itself and the different reports published by the CEIOPS. It is not appropriate to use the framework of the Solvency II Directive as a starting point.</p> <p>14. 11. A revised IORP Directive should be able to handle different pension</p>	
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		<p>systems and the variety of pension agreements, including hybrid systems and leave enough flexibility for national decisions in this respect. A revised IORP directive should also leave enough flexibility for future adjustments of pension arrangements and for new kind of pension agreements. The European level should only intervene in the subsidiarity if national legislation fails to comply with the relevant principles of a single market.</p> <p>15. 12. AEIP wants to stress that proportionality should be taken into account when drafting and applying regulations. They should not be an administrative burden. The rules must not constitute a hurdle for employers to provide pension benefits via IORP's, or smaller IORP's to operate.</p> <p>16. 13. IORP's deal with long term commitments. They are an important source of institutional investment, and can play a stabilising role in crisis situations. IORP's are true long term investors. Therefore standards should be drafted in such a way that they are not procyclical nor intensify short term trends.</p> <p>17. 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. This creates a huge systemic risk.</p> <p>18. AEIP would like to warn for systemic risk and pro-cyclicality that will result from applying a similar approach on all of the institutional investment.</p> <p>19. The use of market prices for calculating pension assets and liabilities, especially the application of spot discount rates, and the implementation of quantitative risk-based funding requirements aggravate indeed pro-cyclicality in pension fund investments.</p> <p>20. 14. Applying a solvency II type approach to pension funds will have consequences on the benefit levels and the social protection models in member states.</p> <p>21. But it will also have important consequences that go well beyond the pension benefits themselves. The derisking that is a consequence of the market value approach will have impacts on the capital markets. Who will be left to take long term commitments? Who will be left to finance illiquid assets?</p>	
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5.	AFPEN (France)	General comment	<ol style="list-style-type: none"> 1. AFPEN, the French Association of Pensions Funds, represents all types of retirement savings players (supplementary retirement, insurance contracts, pension funds, retirement savings plans, etc.): industrial and service companies, insurance companies, banks and management companies, old age provision institutions, actuarial firms, remuneration experts, experts, union representatives. 2. Firstly, we have to specify the following points : we thought about the EIOPA's consultation with a large number of retirement savings players and specially with a group of 7 CAC 40 companies being involved in various pension systems in Europe and internationally (sponsors). 3. We want to draw the attention of the EIOPA on the observations preliminary following ones, resulting from these companies : 4. "- as outlined in some areas of the CfA, companies (being sponsoring employers) are important stakeholders of pension systems in Europe 5. - proposed regulations have significant potential financial implications for sponsoring employers 6. - despite our best efforts and desire to participate in the consultation process, and to contribute our long practical experience of participating into various pension schemes internationally, it is very difficult for our group of companies to provide relevant feedback to the EIOPA consultation because of the structure of the consultation process : the 517 pages document and its 96 questions requires a considerable research and analysis effort and it is difficult to provide holistic/relevant answers in the proposed timeline : we would encourage EIOPA to use a more pragmatic approach and consult directly with the representatives of the main stakeholders/practitioners of pension systems, in order to make consultation more substantial than formal 7. - as outlined in some areas of the CfA, no impact analysis has been carried out on the potential impacts of proposed quantitative regulations on the financials of sponsoring employers, and European financial markets overall : we strongly believe that this should urgently be taken into consideration, as the proposed simplistic declination of insurance based regulation would be a 	<p>Noted.</p> <p>The points that IORPs are generally run on a not-for profit basis, and that IORPs typically have liabilities of long duration have been recorded in the introductory chapter.</p>
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		<p>dangerous shortcut in this respect</p> <p>8. - we further believe that international comparisons will be needed to avoid penalizing European employers in the global competition</p> <p>9. In the timeline imposed by the consultation process, we have not been able to answer questions and we have agreed on the following important messages we would like to bring to the attention of the EIOPA :</p> <p>10. - current pension regulations - in most European countries where corporate pension funds are prevailing as vehicles for providing occupational pensions – have been significantly reinforced over the recent period and are already raising important issues for the long term affordability of providing pension benefits, for both employers and employees; any strengthening will have detrimental impacts with no obvious benefits, all the more in a context of difficult economic environment in Europe</p> <p>11. - we are extremely concerned that proposed pension regulations are inspired from insurance regulations based on the view that pension funds are potential competitors to insurance companies : all the pension funds related to our group of companies are not participating in any commercial insurance activity in the open insurance market and have simply been established for the purpose of managing specific corporate pension plans in one particular country, without any intention to develop other activities especially cross-boarder; this should be taken into consideration in scope and exclusion discussions as we see no urgent nor fundamental need for alignment with insurance regulations</p> <p>12. - we would like to point out that in our group of companies, pension obligations have average maturities between 7 and 20+ years which means that the management of pension assets and liabilities is very long term by nature and therefore should not be regulated like short term insurance obligations (VaR 99,5% 1 year is a nonsense)</p> <p>13. - as outlined in certain areas of the CfA, there are particular features of occupational pension obligations which contribute to the long term solvency of pension plans, like strength of the employer’s covenant, mandatory solvency insurance, potential increase in employee/employer contributions, benefit</p>	
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			<p>freezing or even benefit reductions, on top of segregated assets available in pension funds : this makes pension agreements substantially different from insurance contracts, and are not just risk-mitigating factors or security mechanisms; we don't believe an insurance based regulation and related models can satisfactorily capture these particular features which affect the very nature of the respective commitments/agreements of stakeholders</p> <p>- we would also like to point out that for many of the pension funds in which we participate, the long term financial equilibrium of the pension plan is a matter of collective social discussions with either employee/retiree representatives or trustees which are in sharp contrast with the commercial relationship between an insurance company and its individual clients; this flexibility is needed to adjust pension systems to the demographic and financial evolutions and any regulation that would go against this flexibility will be very detrimental to occupational pension systems in Europe with no obvious benefit."</p>	
6.	AFTI (Association Française des professionnels des	General comment	<p>The Association Française des Professionnels des Titres ("AFTI") is the French association and a leading trade association within the European Union representing the post- trade industry.</p> <p>AFTI has over more than 100 members, all actors in the securities market and back office businesses: banks, investment firms, market infrastructures, issuers.</p> <p>AFTI welcomes the opportunity to contribute to the EIOPA Call for advice on the review of directive 2003/41/EC – second consultation .</p> <p>In its submission, the response of AFTI to the EIOPA consultation will focus on the depositary issues</p> <p>AFTI agrees with the aim of the EIOPA's advice to strike the appropriate balance</p>	Noted.

			between the Directive's objective of ensuring a high level of members/beneficiaries' protection by introducing a requirement for compulsory appointment of a depository when the risks associated to the sakekeeping of assets and the investments are borne by the members/beneficiaries, while refraining from placing the entire responsibility on depositaries which would adversely impact members/beneficiaries through increased costs and restriction of service offering.	
7.	Alecta pensionsförsäkring	General comment	<p>Alecta has managed occupational pension schemes since 1917 and the ITP plan – a DB pension scheme for salaried employees with some 1.5 million individual members and more than 30,000 member companies – since 1960. Even though indexation is not a guaranteed benefit in the ITP plan Alecta has managed to deliver full indexation to the scheme members during the whole period 1960-2011. On a couple of occasions, where the financial situation has been under pressure, the indexation has been achieved with financial support arranged by the parties to the ITP plan – the Confederation of Swedish Enterprise and PTK (the Council for Negotiation and Co-operation).</p> <p>The history of Alecta and the ITP plan is thus an excellent example of how IORPs work in practice and it also shows that IORPs have specific qualities that motivate specific rules. The fact that the parties to the ITP plan are deeply involved in Alecta's business (e.g. by appointing board members at the annual meetings) – which also is typical for IORPs – has of course played a central role for the high priority given to indexation of pensions during the first 51 years of the ITP plan, although indexation is not a guaranteed benefit. The actions arranged by the parties behind the ITP plan to secure indexation in particularly stressed situations are also distinctive. It should be noted that these actions have been taken without any mandatory legislation, directives or any binding sponsor undertaking. Instead these actions are based on the inherent power of the pension promise that has been negotiated between the parties behind the ITP plan.</p> <p>By this Alecta would emphasize that stricter solvency capital requirements</p>	Noted.

		<p>during the past 50 years would hardly have helped Alecta to achieve a better outcome for the scheme members within the ITP plan. On the contrary, stricter capital requirements would most likely have forced Alecta to invest in more “secure” assets which would have provided lower yields. This in turn would have led to a substantial risk of loss of indexation and thus lower pensions and lower purchasing power for a large part of the Swedish population and to higher pension costs for companies, higher costs for employees and a smaller room for salary increases.</p> <p>The defined benefit part of the ITP plan is thus clearly a very robust system, which is extremely well adapted for long term pension management.</p> <p>In light of the above Alecta would like to point to the development for IORPs and insurance companies in Sweden during the second half of 2011 when the euro crisis raged at its worst.</p> <p>Sweden has in a European perspective, a number of positive features;</p> <ul style="list-style-type: none"> <input type="checkbox"/> a high proportion of funded pensions, <input type="checkbox"/> very strong public finances and <input type="checkbox"/> a very small national debt with short maturity. <p>These, in themselves positive, attributes have, in combination with the euro crisis, led to the fact that Sweden has become extremely attractive to investors worldwide. In turn this has pressed the Swedish long-term interest rates to artificially low levels, which has had a direct and tremendously heavy impact on the technical provisions of Swedish IORPs and Swedish insurance companies. Therefore the development in Sweden in 2011 is an excellent example to study</p>	
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		<p>as regards the potential harmful and adverse effects – including procyclical risks – of a solvency capital requirement that is too strict and too sensitive to short term market fluctuations;</p> <p>Short-term fluctuations in the solvency capital risk to force IORPs and insurance companies to take actions that potentially are extremely harmful and could cause permanent injuries. Injuries that could adversely affect not only the scheme members of the IORPs – i.e. the people that the regulations ultimately should be designed to protect – but also the financial markets and, by extension, the Swedish economy at large.</p> <p>Alecta fears that the drastic increase of the solvency capital requirements for IORPs that an introduction of Solvency II solvency requirements would lead to for IORPs throughout Europe could lead to similar consequences that Swedish IORPs and insurance companies have experienced in 2011, though in a completely different (larger) scale, with significant adverse effects for the whole European economy.</p> <p>Thus the development in Sweden during the second half of 2011 illustrates quite well how stringent capital requirements may affect IORPs in Europe. Although the pressure on the technical provisions of Swedish IORPs and insurance companies during 2011 was triggered mainly by the artificially low Swedish long-term interest rates, Alecta believes that the effects that have been experienced are similar to what can happen if the IORP II Directive should lead to the Solvency II capital requirements being imposed on IORPs.</p> <p>Against the above background Alecta would firmly advise against the imposition of solvency capital requirements in accordance with Solvency II on IORPs. Alecta rather believes that the European Commission should seek to design solvency capital requirements for IORPs that are more counter cyclical and less sensitive to short term market fluctuations.</p>	
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10.	AMICE	General comment	<ol style="list-style-type: none"> 1. AMICE, the Association of Mutual Insurers and Insurance Cooperatives in Europe, welcomes the opportunity to provide some comments on EIOPA's response to the Call for Advice on the Review of the IORP Directive of 2003. 2. More than two thirds of all insurers in Europe belong to the mutual and cooperative insurance sector which accounts for close to 25% of all insurance premiums paid by European policyholders. In some EU jurisdictions, mutual/cooperative insurers are the providers of pensions schemes, thus protecting a fair portion of European citizens. 3. From the outset, AMICE would like to stress that members and beneficiaries of all type of pension schemes should benefit from the same level of protection. Therefore, all financial institutions that provide occupational pension products should be regulated according to the risks those products present. As a result, this protection should not depend on the legal form of the institution. Institutions for occupational retirement provision and insurers providing pension products should be subject to the same rules. 4. AMICE would however like to point out that some Member States still apply Article 4 of the IORP Directive. This means that as long as the IORP Directive has not been reviewed, the playing field will remain unlevel among the providers of pension services. 5. AMICE believes that the provisions of the Solvency II framework should serve as the basis for regulating all financial institutions providing occupational pension products although it is certainly necessary to adapt individual Solvency II provisions to pension activities. The level of protection under Solvency II is higher than that under Solvency I. It would in our view neither be sensible nor defensible to establish a less protective regime for institutions providing occupational retirement products. 6. AMICE would like to stress that it is pillar 1 of Solvency II which requires most adaptations because some of its parts of it are not directly suitable for pension schemes. We therefore suggest that the Commission take a legislative initiative and create a dedicated regime for all pension schemes, including non-occupational schemes. In contrast, we feel that pillars 2 and 3 of the Solvency 	Noted
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			<p>II framework provide a good basis for a prudential framework for providers of occupational pensions. Certain adaptations are certainly necessary, but we support widely the application of the level 1 provisions of Solvency II. For this reason, we have limited our comments on EIOPA's response to CfAs 13 through 23 to relatively general expressions of support of EIOPA's proposals. We have to strongly emphasise, however, that the consistent application of the principle of proportionality remains paramount. Mistakes that in our view are being made and will be made (on levels beneath level 1) in the implementation of the Solvency II framework for insurers must not be repeated in the field of supervision of occupational pension providers.</p> <p>In addition to these introductory comments, we provide answers to a limited number of questions of this call for advice, which are considered as most important at this stage of the process by our members. We reserve the possibility – and look forward to the opportunity – to make additional comments in the course of the further legislative process.</p>	
11.	AMONIS OFP	General comment	<p><input type="checkbox"/> 1. AMONIS OFP regrets the short time in which it had to analyse and answer the different fundamental questions, therefore we may adapt our response at a later stage when the underlying goals and agendas crystallize.</p> <p><input type="checkbox"/> 2. AMONIS OFP considers and wishes to underline the importance of the fundamental difference between a pension scheme (the plan, the content of the pension promise) and a pension fund (the institution that manages the scheme). AMONIS OFP acknowledges that this difference might be relatively small in some member states, but stresses that this difference is significantly important in other member states (e.g. Belgium).</p> <p><input type="checkbox"/> 3. One could also consider if there is a real need to review the IORP directive, and if yes if the revision of the directive is the best way to resolves the underlining needs for revision:</p> <p><input type="checkbox"/> - Only 84 of the 140.000 IORPs in Europe are working cross border. However the practical experience learns that this is not due to the bad functioning of the actual directive, but more due to the fact that:</p> <p>a. - IORPs are not for profit institutions who are only executing the</p>	<p>Noted.</p> <p>The point on pro-cyclicality has been recorded in the introductory chapter</p>

		<p>agreements made by the social partners, so the IORPs themselves are not interested to look for “cross border opportunities”</p> <p>b. The biggest “barriers” facing employers who want to organise a cross border IORP will not be resolved by the actual proposals for a revised IORP directive. These decisions are driven by hidden entry barriers like fiscal issues, local resistance, complexity, political issues etc.</p> <p><input type="checkbox"/> - Since the start of the work on the revision of the IORP directive, the further development of pan-European pension funds has almost ceased.</p> <p>- Despite the ambition to review/limit the wide range of exclusion from the scope of the directive, the actual proposals leave all the exclusions and the scope of the directive unchanged.</p> <p>- Existing IORP, already strongly regulated, will be submitted to more (useless) regulation, while the non-regulated institutions will stay unregulated – this should then improve overall pension security and solvency?</p> <p>- Conclusion: the current activities aim to replace the existing, perhaps perceived “inefficient” regulation, only with more inefficient regulation.</p> <p>4. AMONIS OFP considers that the debate on (occupational) pension provisions and the rules by which occupational pensions are provided is a socio-political debate and not a technical one. We therefore would like to call for a political debate within the different European Institutions and with all different stakeholders and national governments/parliaments.</p> <p>As only part of occupational pensions are managed via IORPs, and even occupational pensions are only part of and strongly interlinked with the broader pension policy, a review of the IORP cannot be handled separately from other (national and European) initiatives with regard to pension policy like the forthcoming EC White Paper on Pensions, an eventual review of the insolvency directive, the EU 2020 strategy, the different EU coordination directives on social security, and the different macro-economic and growth related initiatives, etc.</p>	
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			<p>5. AMONIS OFP agrees with the basis of the initiative, namely that the regulation of pension institutions should be risk based, and we support equally the objective to achieve sustainable, safe and adequate pensions. However these ideas are already contained in the actual IORP directive.</p> <p>In the Call for Advice the principle of risk-based supervisory regulation however implies that risk-based capital requirements should be imposed and these should be harmonised across all types of institutions.</p> <p>AMONIS OFP is deeply concerned that the implementation of the proposals made by EIOPA might lead to:</p> <ul style="list-style-type: none"> - A very important compulsory increase in the sponsor contributions, which would cause - A new extra incentive for the transition from DB to DC schemes, or even - The closing or winding-up of pension schemes and institutions, or - the transfer to unit-linked-like "insurance" solutions in which the members are less protected (e.g. "captive's", or in Belgium Branch 23, etc.) - a flight towards what is regarded by EIOPA as being "safe" investments i.e. government bonds, causing the markets for financing the fundamental economic growth (equity etc) to dry up, which will in the longer term impact irreversibly our economic development and inject unmanageable systemic risk across Europe in something as vital as pensions. <p>We consider that this will not lead to the intended better protection and safety for the pension scheme members and might imply the end of the most social not-for-profit and not market driven pension institutions (like IORP's in Belgium and many other member states are).</p>	
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		<p>covenants in the Holistic Balance Sheet, because:</p> <ul style="list-style-type: none"> - It will be extremely difficult to value this covenants and this will prevent instead of ease the intended harmonization and comparability of coverage ratios and risk across Europe - It is in this totally unclear if there will be an impact and if yes how on the liabilities in the balance sheets of the sponsor/employer, which implies a real risk that these sponsor covenants in a next step, should be funded. Preliminary discussions with auditors of employers learns us that they will probably require that the employers will recognize this covenants (which do represent real liabilities of the pension funds but only a overfunding / extra risk buffer) as a liability on their balance sheets. This will cause a direct loss to the beneficiaries of the schemes (the same level of employers' contributions will serve both for funding pension liabilities and funding risk buffers) <p>8. IORP's deal with long term liabilities. They are an important source of institutional investments and available economic financing power, and can play a stabilising role in crisis situations. IORP's are true long term investors. Therefore standards should be drafted in such a way that they are not procyclical nor intensify short term trends.</p> <p>If all long term investors are forced to an identical inefficient risk based regulation using the same standards, everyone will be forced to move in the same direction in periods of turmoil. This creates an embedded and irreversible, unmanageable systemic risk. (e.g. IMF working Paper WP/11/18, August 2011 "Possible unintended consequences of Basel III and Solvency II", or Committee on the Global Financial System (Bank of International Settlements) Paper No 44, July 2011 "Fixed Income Strategies of Insurance Companies and Pension Funds"). Diversification across institutions means in this instance allowing different institutions to manage risk as they see fit, according to their governance structure or employer risk tolerance.</p> <p><u>Pension funds are capable of providing long term financing of illiquid projects</u></p>	
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		<p>and can take on longer term financing risk. The de-risking of investments (at least moving to investments that EIOPA deems less risky) will have important consequences that go well beyond the pension benefits themselves. The de-risking that is a consequence of the incorrect risk based approach will have impacts on the capital markets.</p> <p>The proposed changes will have macro-economic impacts on employment and growth which will probably not be in line with the Europe 2020 strategy.</p> <p>Pension funds, at least in Belgium, are accustomed to asset price volatility. Contrary to banks or insurance companies, for decades the assets of pension fund have been marked to market. The liabilities are however still marked to book. Pension funds have been challenged to manage these assets and liabilities: managing balance sheet and cover ratio volatility. We feel however that using book and market values on either side of the balance sheet handicaps in some way the management of this balance sheet volatility. So to a certain extent we are advocates of introducing a kind of market value for liabilities, with the aim to remove the handicap in managing the volatility without introducing an new handicap. The blind use of market prices however for calculating pension liabilities, especially the application of actual term structures of interest rates like swap curves, and the implementation of quantitative risk-based funding requirements aggravate indeed pro-cyclicality in pension fund investments. This is introducing a new and much more severe handicap. Pension liabilities are by nature long term and not traded on a market (ie there is no "market price") so mere treating them as deterministic cash flows is not correct. An approach for reaching a market based fair value should be used. This is no synonym for transfer value.</p> <p>Applying a solvency II type approach to pension funds will have consequences on the benefit levels and the social protection models in member states.</p> <p>9. AMONIS OFP wishes to stress that proportionality should be always taken in account when drafting and applying regulations. The rules must not constitute a hurdle for employers and social partners to provide pension benefits via IORP's or IORPs to operate</p>	
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			<p>10. A new directive should not lead to the shift from one type to another, e.g. from defined benefit to defined contribution or hybrid schemes or vice versa, or from collective to individual, or occupational to private.</p> <p>11. AMONIS OFP considers also that pension policy fundamentally differs from consumer policies. Starting from a consumer protection idea supposes that pension funds are commercial operators providing a product and scheme members would be consumers of this product. The benefits managed by pension funds are not like that. In Belgium and many other member states, pension benefits of employees come from pension schemes which are embedded in the labour relations and are part of national social and labour law. In many cases the different choices follows out of collective choices by the social partners and can in no way be compared to consumer-like relations.</p> <p>12 The freedom of social partners to negotiate on occupational pensions should not be hampered.</p> <p><input type="checkbox"/> AMONIS OFP regrets that Art. 28 of the Charter of fundamental rights, which is now binding for any EU-action, is not mentioned in the draft response of EIOPA. In many member states non-profit IORP's on collective agreement basis play a very important role, especially to widen the coverage of supplementary pensions systems. The jurisdiction of the ECJ (see C-45/09 – Rosenblatt, paragraph 67 et seqq.) attributes to the social partners a wide power of discretion by collective bargaining, also on occupational pension systems. Art. 153, 154 and 155 of the Lisbon treaty also recognises the role of social partners and social bargaining in shaping social policy. This power has to</p>	
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			<p>be safeguarded even by any European action.</p> <p>13. One main challenge for policy makers should be to extend the provision of workplace pensions of EU citizens who presently are not covered by workplace pensions. AMONIS OFP would like to remind EIOPA and the Commission of its intention not to negatively affect the supply and cost-efficiency of occupational retirement provision in the EU.</p> <p>14. Given the multiple potential negative impacts envisaged in the revision of the IORP Directive, AMONIS OFP advises EIOPA to plead for different thorough, adequate impact assessment studies carried out before any level 1 legislative proposals are made. This impact studies should cover the impact on the provision of occupational pensions by employers and social partners as well as both micro- and macro-economic impacts of the revision.</p>	
12.	ANIA – Association of Italian Insurers	General comment	<p>The ANIA – Association of Italian Insurers welcomes this opportunity to provide its comments on EIOPA’s draft response to the European Commission’s call for advice on the review of the 2003 IORP Directive.</p> <p>As a preliminary remark, as ANIA we totally share and agree with the same CEA – Insurers of Europe position.</p> <p>***</p> <p>In its core, the ANIA believes that the review of the IORP Directive should be based on two key principles:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Same risks, same rules, same capital <input type="checkbox"/> Substance over form <p>The ANIA took these two principles as the main thread throughout their response to the consultation.</p> <p>In order to achieve fair competition and consistency in prudential regimes, the</p>	<p>Noted.</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p> <p>That occupational pensions business carried on by insurers also has a social and employment context has been added to the advice.</p>

		<p>ANIA strongly supports the application of the ‘same risks, same rules, same capital’ principle to all financial institutions, including IORPs, providing occupational pension products. The Solvency II principles as agreed in the Solvency II Framework Directive follow a risk-based approach and create a sound prudential regime. These principles should serve as the basis for regulating all financial institutions providing occupational pension products provided the economically significant characteristics of the different pension products or schemes are taken into account. Comparable specificities should be taken into account in a similar way for all providers, including insurers.</p> <p>In line with the principle of ‘substance over form’, the ANIA strongly believes that all financial institutions that provide occupational pension products should be regulated not on the basis of the legal vehicle through which products are sold, but rather according to the risks those products present to the provider, members and beneficiaries. As a result, Members’ and beneficiaries’ protection shall neither depend on the legal form of the institution they are affiliated to nor on the supervisory regime.</p> <p>Additionally, the ANIA considers it extremely important that areas of political nature be solved at level 1. Furthermore, it should be ensured that the new rules should be accompanied by EU-wide level 2 implementing measures and level 3 guidance in order to reach a sufficient degree of harmonisation across the EU.</p> <p>Next, the ANIA is surprised by the mention by EIOPA of three key differences between IORPs and insurers (2.6.5 – 2.6.7). The ANIA acknowledges that there are in some member states differences between some products of IORPs and insurance companies that should be taken into account. However, regarding these key differences defined by EIOPA the ANIA wants to stress that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> not only IORPs have a social and employment context. Insurers too are active in the occupational pensions business. In 2008, life insurance companies had a market share of 47% in the second pillar provision of pensions. These are subject to similar social and labour laws as IORPs; <input type="checkbox"/> also employers are involved in the funding of their pension plans respective to the insurance undertaking; 	
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		<ul style="list-style-type: none"> <input type="checkbox"/> also the third pillar provisions have an important social context; <input type="checkbox"/> since IORPs are totally acting in a social context and must ensure extremely important objectives like pension provisions to members' and beneficiaries' as a very concentrated commitment and without possibility to diversify with other commitments, protection measures for IORPs should offer levels of protection not lower than those set for insurers; <input type="checkbox"/> there could be arrangements also for employers with an occupational pensions plan by an insurer where the employer is requested to provide additional funding in case of shortfall of its pension plan, such as for instance in the case of an underfunded Defined Benefit plan; <input type="checkbox"/> even if there are more IORPs than insurers, this should not lead to these entities being subject to less attention by the supervisors. In fact, letting up on the supervisory attention towards IORPs would clearly be disadvantageous to the members and beneficiaries. In terms of occupational pension plans, the amount of IORPs and insurers pensions' schemes will be more or less similar and the funding levels of both should be checked in a consistent manner. The proportionality principle should be taken into account in a similar way for both the insurance and the pension funds sectors. <p>Finally, the 5th quantitative impact assessment of Solvency II revealed that certain parts of the framework may not be entirely appropriate. In the outset of the CfA, the EC states that although the Solvency II Directive should serve as at benchmark for the review of the IORP Directive, the lessons learned from Solvency II also needs to be taken into account.</p> <p>The ANIA agrees with the importance of drawing appropriate conclusions from the lessons learned and wishes to highlight that many of the challenges made apparent by e.g. QIS 5 are similar for insurance undertakings and IORPs. Amongst others, these challenges are related to the areas of long term guarantees, including occupational pension products. As a result, the ANIA considers that the right approach consist in solving these problems, and introducing appropriate solutions, in both the IORP and the Solvency II Directives, rather than to try and solve issues in one Directive and leave the</p>	
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			problems open in the other one.	
13.	AON HEWITT	General comment	<p>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.</p> <p>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.</p> <p>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</p>	Noted

		<p>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.</p> <p>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,</p> <p>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.</p>	
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			<p>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%).</p> <p>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.</p> <p>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.</p> <p>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:</p> <p><input type="checkbox"/> Allow employers to maintain the flexibility on the scope of retirement programs that are in alignment with their labour strategy and needs;</p>	
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		<ul style="list-style-type: none"> <input type="checkbox"/> Consider affordability from the perspectives of both financial costs and financial risks; <input type="checkbox"/> Promote ease of administrative and governance policies; and <input type="checkbox"/> 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. <p>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.</p> <p>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 overburdening them with further liabilities and capital requirements, would be the best way to safeguard employee interests.</p> <p>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.</p> <p>In our European employers' survey, three quarters of respondents consider that</p>	
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			<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <input type="checkbox"/> What are the problems that must be solved? <input type="checkbox"/> Which categories of pension vehicle do these problems apply to? <input type="checkbox"/> How do the proposed solutions address the problem? <input type="checkbox"/> Are the costs and negative impacts justified by the benefits from mitigating whatever the problem is? <input type="checkbox"/> What alternatives are there to solve these problems, beyond legislative changes at the European and/or national levels? <p>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.</p> <p>If, as it appears, the proposals will require greater assets somewhere in the</p>	
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14.	Association Française de la Gestion financière (AF)	General comment	<p>AFG is the representative association for the French investment management industry. AFG represents through its 600 members EUR 2,6 trillion assets under management of which EUR 1,4 trillion was managed by approximately 11,500 funds at end December 2010. French asset management industry ranks first in Europe.</p> <p>AFG is a member of EFAMA and EFRP.</p> <p>Reasons for reviewing the IORP Directive: the European Commission gave three main objectives for reviewing the IORP Directive:</p> <ul style="list-style-type: none"> <input type="checkbox"/> simplifying the setting-up of cross-border pension schemes; <input type="checkbox"/> securing modernisation of prudential regulation for IORPs which operate DC schemes; and <input type="checkbox"/> allowing IORPs to benefit from risk-mitigation mechanisms. <p>It is vital to find the right balance between the objectives of wanting a high level of a high security level for all occupational schemes and of improving citizens' access to complementary occupational and private pensions.</p> <p>The application of Solvency II rules to pension schemes doesn't seem relevant in many ways and we fear that these new rules would limit occupational pension schemes coverage.</p> <p>Differences between IORPs/Pension schemes and insurers: there are huge differences between insurers and IORPs, especially where IORPs are DC pension schemes. In this last case, the IORP is not always an independant legal entity : employer and employees representatives select providers (asset anagers, plan</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p> <p>The comment on pro-cyclicality has been recorded in the introductory chapter</p>
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			<p>administrator...) and set up a Pension scheme specifying the pension scheme rules (employer contribution, investment options offered...). The pension scheme is a contract and it has nothing in common with a life insurance undertaking.</p> <p>If the scheme is managed by entities already covered by a Directive, no additional requirement should be added (capital requirements for instance).</p> <p>The implementation of some of the proposed new regulatory, coming from Solvency II, would increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity.</p> <p>We would like to highlight the fact that in some Member States, like France, the word "Institution" used by the IORP Directive is not appropriate. Speaking of "Institution" does not seem relevant where pension schemes don't have a legal personality. The wording of the Directive should take into account occupational pension schemes designed as contracts signed between employer and employees representatives. In these contracts, the signatories select the providers (asset managers, administrator...).</p> <p>Cost to employers and beneficiaries: there is considerable concern that the imposition of Solvency II style regulation on existing employer based pension schemes could add costs to employers or reduce the level of benefits for beneficiaries. In regards to DC pension schemes, the application of additional capital for operational risks and other similar measures would reduce the benefits payable on retirement. National regulation already takes into account operationa risk. In France, for instance, Perco operational risk is borne by the asset manager and the administrator of the scheme which are both regulated and have their own capital requirements to cover operational risk.</p>	
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		<p>duration. This has already led to an overall reduction to insurance company asset allocation to equities, and other asset classes like real estate, and we fear that as the regulations come into force this trend could be accelerated. Applying Solvency II style regulation more broadly would weigh heavily on these asset classes and make it more difficult for companies to raise equity, thereby constraining the long-term financing companies and the growth potential of the European economy. It could also deny pension investors from investing in inflation hedging assets that are suited to matching long duration liabilities. For these reasons, the relative risk asset charges embedded in the Solvency II standard formulae are considered by many pension funds to be counterintuitive and likely to discourage them from holding non-government risky assets, including long-term credit, structured credit, equities and alternatives. Consequently, pension funds may sell a significant proportion of these assets over a relatively short period of time around the implementation date of Solvency II. Furthermore, for the market it would be very negative when all investors with long liabilities have to invest under the same rules, if even their structure is very different. This would lead to a very similar behavior of all market participants which would increase volatility and contribute to systemic risk. In this respect, we strongly agree with the view that IORPs/Pension schemes can serve as a stabilizer for markets if they are not regulated in a way that causes pro-cyclical effects. The QIS should therefore take into account the negative macroeconomic and financial impacts, in particular regarding market volatility and pro-cyclical effects.</p> <p>Conceptual approach to solvency rules: AFG believes that the solvency framework for IORPs/Pension schemes should take into account at least the following aspects of the occupational pension market:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The various specificities of the vehicles in question. Each vehicle has different funding requirements and could operate in its own capacity, through an IORP subsidiary or through providers (i.e. a bank, asset management entity, an issuer etc.). 	
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			<p><input type="checkbox"/> The specificities of the products run and offered through the vehicle and whether it is a pure DC scheme. If a scheme does not contain any guarantee and/or biometric risk coverage, the market and longevity risks are borne by the member.</p> <p><input type="checkbox"/> The specificities of the risks involved. Traditionally, only financial risks have been taken into account. However, other factors could be considered. EIOPA has identified eight different types of risks in a recent study.</p> <p><input type="checkbox"/> Who bears that risk, whether it is the employer, the employee, the providers or the vehicle itself? If it is the vehicle, capital should be required.</p> <p><input type="checkbox"/> The specific role of the pension vehicle and whether it is to play an essential role in pension provision or to offer an additional source of retirement income.</p>	
15.	Association of British Insurers	General comment	<p>The UK Insurance Industry</p> <p>The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 24% of the UK's total net worth and contributing the fourth highest corporation tax of any sector. Employing over 275,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with a fifth of its net premium income coming from overseas business.</p> <p>Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins</p>	Noted

			<p>a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed. Every day, our members pay out £155 million in benefits to pensioners and long - term savers as well as £58 million in general insurance claims.</p> <p>The ABI</p> <p>The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.</p> <p>The ABI's role is to:</p> <ol style="list-style-type: none"> a. Be the voice of the UK insurance industry, leading debate and speaking up for insurers. b. Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation. c. Advocate high standards of customer service within the industry and provide useful information to the public about insurance. d. Promote the benefits of insurance to the government, regulators, policy makers and the public. <p>Executive summary:</p> <ol style="list-style-type: none"> 1. The ABI welcomes the opportunity to respond to EIOPA's consultation on its draft response to Call for Advice (CfA) on the review of Directive 2003/41 second consultation (the CP). We have responded to the technical questions 	
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		<p>posed, but have general comments to give on the European Commission’s review of the IORP Directive and the EIOPA CP.</p> <p>2. The timetable set by the European Commission (the Commission) for EIOPA is very ambitious, and we appreciate that this has put pressure on EIOPA. However, we believe the consultation period is unacceptably short considering the hugely important and complex issues at stake.</p> <p>3. Whilst Solvency II requirements can be helpful for improving certain areas of the IORP Directive, for example on governance requirements, this does by no means apply to all areas of the IORP Directive. We are strongly opposed to the application of Solvency II to the quantitative aspects of the IORP Directive. It should be noted that our comments on the technical aspects of the capital requirements below are very much secondary to our view that Solvency II is not an appropriate benchmark for this part of the Directive.</p> <p>4. The primary objective of any changes to the IORP Directive must be to improve pension outcomes and should be in line with the Commission’s objective of achieving adequate and sustainable pensions. We believe that the proposed solvency requirements would have the opposite effect and would undermine high quality pension provision.</p> <p>5. We are extremely concerned about the lack of detail on how the holistic balance sheet (HBS) might operate, and how the employer covenant and Pension Protection Fund might be valued. This lack of detail has made it extremely challenging to respond to the quantitative questions in the CP.</p> <p>6. These issues are critical to this technical consultation. While we appreciate that, in developing the HBS, EIOPA has attempted to reflect the different set ups of trust based DB pensions schemes in the EU, a proposal that has such far reaching implications for national pension systems and pensioners should not be proposed without detail on how the valuations and calculations relating to the HBS should operate.</p> <p>7. While the Commission has seen the Solvency II regime as a suitable benchmark for IORPS, caution needs to be taken about using this piece of legislation (currently not finalised) without taking into consideration the</p>	
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			<p>specificities of pension schemes in the EU. We provide further examples of this in response to the questions below.</p> <p>8. Lastly, given the hugely important and complex issues involved in this consultation, we are extremely disappointed with the lack of impact assessment and evidence to support the proposals included in the CP. An impact assessment is critical to understanding whether the changes support the Commission's aim of creating an internal market for occupational retirement provision organised on a European scale. We believe EIOPA's advice to the Commission would not be complete without such an assessment or understanding.</p>	
16.	Association of Consulting Actuaries (UK)	General comment	<p>We thank EIOPA for the diligence and expert nature of the consultation document and the chance to respond. Whilst we understand that EIOPA were constrained by the nature of the request from the EC we would have preferred if the nature of the questions in some areas had been more open and we have made reference where appropriate below to wider issues of particular importance.</p>	Noted
17.	Association of French Insurers (FFSA)	General comment	<p>1. As a beginning we would like to state that the goal of the pensions European legislation must be to ensure a sound single market in the European union with a good protection for citizens and with a complete level playing field between providers, in particular between IORPs (subject to the IORP directive) and insurers (currently subject to the life insurance Directive 2002/83/CE and partially to the IORP directive; potentially subject in the future to Solvency II).</p> <p>2. Solvency rules for IORPs should seek to guarantee a high degree of security for the beneficiaries, who must receive equal protection under risk-based economic rules whilst looking for an adequate prudential regime for long term guarantees, both for IORPs and insurers.</p> <p>3. The aim for the Commission to launch a consultation on the revision of the IORP directive was in the first place to develop the cross border activity and moving towards a supervisory regime funded on a risk based approach.</p> <p>4. 1. Cross border activity</p> <p>5. For cross-border activity to develop, it is necessary at European level to ensure level playing field within all occupational pension providers. This simple</p>	<p>Noted</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p>

		<p>state leads to the following principle: substance must prevail over form.</p> <p>6. The French Insurance Association (FFSA) considers that any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime.</p> <p>7. Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop.</p> <p>8. Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. The FFSA considers that adequate prudential requirements for both IORP and Solvency II directives should be sought in order to ensure a consistency between stakeholders.</p> <p>9. According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. The FFSA urges the Commission to examine this issue as suggested by EIOPA whilst maintaining the possibility for occupational retirement provision business of insurance undertakings to be within the scope of the future directive.</p> <p>10. A transitional solution should be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive:</p> <p>11. Where, on the date of entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive 2003/41/EC, such home Member States may, until the review of Directive 2003/41/EC is completed, continue to apply the laws, regulations and administrative provisions</p>	
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			<p>that had been adopted by them with a view to comply with Articles 1 to 19, 27 to 30, 32 to 35 and 37 to 67 of Directive 2002/83/EC as in force on the last date of application of Directive 2002/83/EC.</p> <p>12. In order to retain a level playing field until the review of the IORP Directive is completed a transitional period for occupational pension provision should be introduced into the Solvency II Directive.</p> <p>13.</p> <p>14. 2. Risk based approach</p> <p>15. The second point raised by the Commission is to propose an architecture funded on a risk based approach for the future IORP directive. If we look at the risks, it is to assess an appropriate level of protection for members/beneficiaries. The FFSA regrets that EIOPA seems to leave to the Commission the issue of protection of members/beneficiaries.</p> <p>16. In terms of risk-based regime, Solvency II is a benchmark. If the calibration of Solvency II regarding long-term commitments and in particular pension scheme is not necessarily adequate, the principles of the Framework Directive can be very useful.</p> <p>17. In our view, the establishment of a risk based approach means that the following principle should prevail: same risk, same rules, same capital ... and same protection.</p> <p>18. Consequently, technical rules adopted for pension should be integrated in Solvency II.</p> <p>A future prudential regime built according to these principles must reflect the specificities of each IORP (sponsor covenant, possible reduction of benefits ...) and that is why the FFSA supports the development of a holistic balance sheet that will bring greater transparency. In a citizen's protection approach, this holistic balance sheet should be made public.</p>	
18.	Association of Pensioner Trustees in	General comment	We note EIOPA's comments in 2.8.3: "EIOPA also wishes to refer to its advice that the 100 member exemption from the IORP be retained". We welcome the proposal to allow member states continued discretion on the application of the	Noted

	Ireland		<p>revised IORP Directive to schemes with 100 members or less.</p> <p>In our view, much of the proposed amendments to the IORP Directive are disproportionate for defined contribution schemes, in particular one member arrangements, and therefore this provision is critical. There are two areas where we accept the proportionality argument for distinguishing between defined contribution and defined benefit pensions is not as strong:</p> <p><input type="checkbox"/> We recognise the growing emphasis on governance across financial services and in this regard we would support a requirement for at least one trustee of a trust based IORP to meet specified fitness and probity requirements (a 'professional trustee'). It should not be compulsory however for there to be more than one professional trustee.</p> <p><input type="checkbox"/> We also recognise the importance of clear communication to members. In principle we support some harmonisation of member communications, although the effectiveness of this will depend on the final outcome of the proposals.</p>	
19.	Assoprevidenza – Italian Association for supplement	General comment	<p>1. Level playing field between operators is often brought forward as one of the objectives that should be achieved. In most member states, IORP's are not-for profit institutions established by employers or social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). They have a fundamentally different activity than a commercial undertaking, and should therefore not be treated in the same way.</p> <p>2. Review of the IORP directive can not be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of political nature.</p>	<p>Noted</p> <p>The comment on pro-cyclicality has been recorded in the introductory chapter</p>

		<p>3. The goal of the regulation should consist in facilitating the existence of good pension schemes for the European workers and citizens. In a number of member states pension schemes exist since a long time. They are regulated and function well, and can prove a track record in delivering pensions.</p> <p>4. The barriers for the setup of a cross border activity are not only of prudential nature. They have to deal also with tax issues, resistance of local stakeholders, costs for managing a complex legal environment, and possibly also a basic lack of demand since cross border economies of scale on the asset management side can also be achieved by other means.</p> <p>5. The directive takes the single market as starting point. It must however take the social aspect of pensions fully into account, as they are part of the European social model. Regulation of pensions might not result in a situation whereby employers become discouraged to provide occupational pensions because of the cost/risk balance. AEIP believes that strong occupational pensions are superior to individual pension solutions, both from an economical as a social perspective. Pensions should continue to be considered as part of labour agreements.</p> <p>6. The basis for the review of the IORP Directive should be the IORP Directive itself and the different reports published by the CEIOPS. It is not appropriate to use the framework of the Solvency II Directive as a starting point.</p> <p>7. A revised IORP Directive should be able to handle different pension systems and the variety of pension agreements, including hybrid systems and leave enough flexibility for national decisions in this respect. A revised IORP directive should also leave enough flexibility for future adjustments of pension arrangements and for new kind of pension agreements. The European level should only intervene in the subsidiarity if national legislation fails to comply with the relevant principles of a single market.</p> <p>8. Assoprevidenza wants to stress that proportionality should be taken into account when drafting and applying regulations. They should not be an administrative burden. The rules must not constitute a hurdle for employers to provide pension benefits via pension funds, or smaller pension funds to operate.</p> <p>9. IORP'S deal with long term commitments. They are an important source of</p>	
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			<p>institutional investment, and can play a stabilising role in crisis situations. Pension funds are true long term investors. Therefore standards should be drafted in such a way that they are not procyclical nor intensify short term trends. 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. This creates a huge systemic risk.</p> <p>10. A new directive should be neutral towards different type of pension schemes, and should not lead to the shift from one type to another, e.g from defined benefit to defined contribution or hybrid schemes or vice versa, or from collective to individual, or occupational to private</p> <p>11. The liabilities encountered in pension schemes can be very different from those in a insurance contract concluded between parties. Benefits can be conditional, they can even be reduced when employers and employees agree, pension protection schemes can interfere. Especially in those schemes that are negotiated between social partners, liabilities are not to be treated as fixed items. Security becomes as such in some types of scheme part of the pension promise itself. Harmonisation will be very difficult because of the differences in the schemes. The freedom of social partners to negotiate on occupational pensions should not be hampered.</p> <p>11. Best practices already exist in member states, so we support a flexible approach by control authorities.</p> <p>12. impact assessments are needed before issuing decisions at level 1.</p>	
20.	Assuralia	General comment	<p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. Our responses to a number of specific questions of the second Call for Advice need to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that</p>	Noted

		<p>occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> <p>2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios. □ The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures.</p> <p>3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:</p> <p>a) With regard to the pension institutions, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements.</p> <p>b) With regard to the pension obligation, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently.</p> <p>4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level). □ These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.</p>	
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21.	ATOS	General comment	<p>ATOS and a group of 6 CAC 40 companies being involved in various pension systems in Europe and internationally would like to make the following general comments :</p> <ul style="list-style-type: none"> - as outlined in some areas of the CfA, companies (being sponsoring employers) are important stakeholders of pension systems in Europe - proposed regulations have significant potential financial implications for sponsoring employers - despite our best efforts and desire to participate in the consultation process, and to contribute our long practical experience of participating into various pension schemes internationally, it is very difficult for our group of companies to provide relevant feedback to the EIOPA consultation because of the structure of the consultation process : the 517 pages document and its 96 questions requires a considerable research and analysis effort and it is difficult to provide holistic/relevant answers in the proposed timeline : we would encourage EIOPA to use a more pragmatic approach and consult directly with the representatives of the main stakeholders/practitioners of pension systems, in order to make consultation more substantial than formal - as outlined in some areas of the CfA, no impact analysis has been carried out on the potential impacts of proposed quantitative regulations on the financials of sponsoring employers, and European financial markets overall : we strongly believe that this should urgently be taken into consideration, as the proposed simplistic declination of insurance based regulation would be a dangerous shortcut in this respect - we further believe that international comparisons will be needed to avoid penalizing European employers in the global competition <p>In the timeline imposed by the consultation process, we have not been able to answer questions and we have agreed on the following important messages we would like to bring to the attention of the EIOPA :</p> <ul style="list-style-type: none"> - current pension regulations - in most European countries where 	Noted
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		<p>corporate pension funds are prevailing as vehicles for providing occupational pensions – have been significantly reinforced over the recent period and are already raising important issues for the long term affordability of providing pension benefits, for both employers and employees; any strengthening will have detrimental impacts with no obvious benefits, all the more in a context of difficult economic environment in Europe</p> <ul style="list-style-type: none"> - we are extremely concerned that proposed pension regulations are inspired from insurance regulations based on the view that pension funds are potential competitors to insurance companies : all the pension funds related to our group of companies are not participating in any commercial insurance activity in the open insurance market and have simply been established for the purpose of managing specific corporate pension plans in one particular country, without any intention to develop other activities especially cross-boarder; this should be taken into consideration in scope and exclusion discussions as we see no urgent nor fundamental need for alignment with insurance regulations - we would like to point out that in our group of companies, pension obligations have average maturities between 7 and 20+ years which means that the management of pension assets and liabilities is very long term by nature and therefore should not be regulated like short term insurance obligations (VaR 99,5% 1 year is a nonsense) - as outlined in certain areas of the CfA, there are particular features of occupational pension obligations which contribute to the long term solvency of pension plans, like strength of the employer’s covenant, mandatory solvency insurance, potential increase in employee/employer contributions, benefit freezing or even benefit reductions, on top of segregated assets available in pension funds : this makes pension agreements substantially different from insurance contracts, and are not just risk-mitigating factors or security mechanisms; we don’t believe an insurance based regulation and related models can satisfactorily capture these particular features which affect the very nature of the respective commitments/agreements of stakeholders - we would also like to point out that for many of the pension funds in which we participate, the long term financial equilibrium of the pension plan is a 	
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			<p>matter of collective social discussions with either employee/retiree representatives or trustees which are in sharp contrast with the commercial relationship between an insurance company and its individual clients; this flexibility is needed to adjust pension systems to the demographic and financial evolutions and any regulation that would go against this flexibility will be very detrimental to occupational pension systems in Europe with no obvious benefit</p>	
22.	Atradius Credit Insurance N.V.	General comment	<p>Atradius asks in the strongest possible terms that a new IORP Directive based on Solvency II standards is not imposed on funded DB pension scheme liabilities under UK and NL legislation.</p> <p>The impact of imposing this legislation will undoubtedly be that DB pension scheme liabilities will increase, which would lead to (larger) deficits. Atradius, as well as other companies, will be faced with having to pay millions as a direct result of the imposed change of 'standard'. The European Commission should understand that such an imposition will have a hugely detrimental effect on our operation and on the UK and NL economy at large in terms of significant additional cost, at a time when we need to be focussing all our energies and revenues on business growth.</p> <p>We do not see the need for greater harmonisation of benefits across Europe and certainly do not see that such aims should override the needs of each country. We cannot see any reason why UK and NL should effectively be singled out to suffer detriment if these standards are introduced to funded pension schemes, when unfunded schemes are excluded. Is it really just about applying one standard across Europe – nothing else to be taken into consideration? There seems an unnecessary rush to review the IORP Directive; careful consideration of the issues requires more time and a full impact analysis is indeed necessary in this context.</p> <p>We believe, as do other bodies, in the UK (such as CBI, Trades Unions and Pension Funds) as well as in NL (such as Pensioenfederatie, the Actuarial</p>	Noted

			<p>Society and Pension Funds), that there is sufficient protection in place in both the UK and the NL system, thereby making the imposition of this standard unnecessary, yet the Commission still seem to be intent on marching ahead with this legislation. From what we can see it would not adversely impact any individual, business, or country if the Directive remains unchanged. Whereas, if a revised Directive is imposed UK and NL individuals would see limited additional benefit as there is already adequate protection in place, businesses would clearly be severely adversely impacted as noted above, and economies will not have the billions in the market place that are sorely needed for business growth. Moreover, forcing employers to pay more just to meet these standards would be detrimental to members of DB schemes who would likely suffer loss of benefit from pension schemes that are already struggling to fulfil promises made decades ago.</p> <p>We feel very strongly that the European Commission are wrong to impose such legislation and have every intention of lobbying governments and trade organisations in an effort to see this anti-UK, anti-NL and anti-DB legislation stopped.</p> <p>Pensions in EU countries are very different in nature. Enforcing a legislation that is identical for each of these countries should not be a goal in itself. Rather, the Commission should focus on improving the understanding of pension promises by imposing communication requirements first.</p>	
23.	Balfour Beatty plc	General comment	<p>The timescales for responding to the consultation are extremely short and therefore we have been able to respond only on the issues which are of highest importance to us. Absence of a reply to any question should not be taken as signifying our agreement to that question.</p> <p>Whilst we support the principle that members' benefits should be protected we are unsure in what ways the current regime fails to do this and therefore the necessity for significant (or any) change.</p>	<p>Noted.</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>We fully support the recommendation of a full cost / benefit analysis of the proposals. We believe that this analysis should include both quantitative and qualitative impact assessment, and look at the impact not only on pension schemes but also the broader economy as we believe that some proposals could affect equity and bond markets and therefore have wide ranging implications. Given the possibly very significant implications, we strongly believe this analysis should take place before the Commission considers the options. We have carried out approximate calculations of the possible impact on one of our large pension schemes, which indicate that if Solvency II were applied to pension schemes the liabilities would increase from some Euro 3bn to Euro 5.8bn. This is a very significant increase in liabilities, and one we believe is consistent with the proportionate increase for many other UK pension schemes. Whilst employer covenant will fill a large part of the gap in our case we are still concerned at the level of the liabilities that could arise.</p> <p>In addition to the increase in liabilities, any change in regulatory and funding requirements will result in potentially significant costs of advice to schemes and companies as trustees and sponsors take advice on what the changes mean for their scheme. Whilst this may settle down once any regime has been in place for a while any increase in costs of running pension schemes is likely to accelerate their closure.</p> <p>We strongly disagree that pension schemes should be treated in similar ways to insurance companies, which are inherently very different entities. The fundamentally different nature of the two arrangements, insurance companies operating in a commercial environment and existing to make a profit compared with pension schemes which provide social benefits to individuals as a result of their employment mean that there should be separate regimes specifically designed for the two different arrangements.</p>	
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			<p>We note that in all but one of the options for the discount rate, future liabilities are discounted at (or near to) a risk-free rate. Even within that one option where a discount rate linked to the return on assets (the usual approach in the UK, with margins for prudence) is mooted, the risk-free rate is still used to determine the “big picture”. The implicit assumption that a risk-free rate is appropriate has not been proven and should not be accepted without evidence.</p> <p>The Commission states that aims for pensions were adequacy, sustainability and safety. Whilst a strong solvency regime may meet, in the short term, the safety aim, the associated costs to sponsor we believe would accelerate the closure of DB pension schemes in the UK. This would therefore be unlikely to achieve the Commission’s first two aims of adequacy and sustainability. This would also be expected to reduce, rather than increase, the number of DB cross-border pension schemes.</p> <p>Finally, we do not believe that now is the right time to be considering applying the Solvency II regime to pension schemes. The Solvency II Directive for insurers is not fully operational until January 2014. Any consideration as to whether pension schemes should be subject to a similar regime should await practical experience (perhaps of several years) of operating that new regime for insurers. There may well be unanticipated issues arising from Solvency II for insurers the application of which might prove detrimental to pension schemes, members’ benefits and the broader economy and we therefore believe there is no compelling case for urgent (if any) action</p>	
24.	BARNETT WADDINGHAM LLP	General comment	<p>Barnett Waddingham LLP welcomes the opportunity to respond to EIOPA regarding its consultation paper on its draft advice to the European Commission.</p> <p>We are the largest actuarial independent partnership in the UK, and are wholly owned and managed by our 50 partners. Our core business is the provision of</p>	Noted

			<p>actuarial and investment consultancy services to pension scheme employers and trustees, as well as administration and pension scheme management services.</p> <p>Overall we are concerned that the proposals will impact adversely on the UK private sector pension system and, contrary to the EU's aim, could lead to reduced security and reduced retirement income for many. Our response concentrates on the points regarding security and funding of defined benefit occupational pension schemes that we believe are most important.</p>	
25.	BASF SE	General comment	<ul style="list-style-type: none"> <input type="checkbox"/> The primary objective of the IORP Review should be to improve the coverage of employees with occupational pensions and the current benefit level. <input type="checkbox"/> All actions to change the IORP Directive should be measured against the primary objective. <input type="checkbox"/> Quantitative impact studies & qualitative impact assessments are needed at every stage of the legislative process of revising the IORP Directive in order to avoid unintended adverse consequences <input type="checkbox"/> We would like to emphasize that the Solvency II Directive should not be the starting point of any modification of the IORP Directive. Instead and in line with EC Call for Advice, we would like to advocate developing a supervisory regime sui generis, taking the IORP Directive as the starting point. <input type="checkbox"/> This approach seems appropriate since essential differences exist between IORPs and insurance companies: <ul style="list-style-type: none"> - IORPs have a social dimension providing occupational pension schemes that match the 1st pillar pensions which on their own prove not to be sufficient to secure old age income. - IORPs are a means to provide remuneration to the employees for their service with the sponsoring companies and, in addition, a means of the company's social policy towards its employees. Therefore, IORPs do not provide products that are sold on the private third pillar insurance market. 	<p>Noted</p> <p>The point about involvement of social partners in the governance of IORPs has been recorded in the introductory chapter</p>

		<ul style="list-style-type: none"> - IORPs – mostly – are not-for-profit institutions – they do not have to remunerate shareholders, - Occupational schemes provide a wider coverage, especially through collective agreements, as opposed to individual voluntary solutions. Such industry-wide pension schemes tend to be administered by IORPs. - Other IORPs have no or very few staff members and the sponsor(s) rely on corporate personnel to manage the scheme. There is evidence that IORPs are characterized by great efficiency and by low internal costs, in particular due to the fact that almost all the employees in a given company or sector are covered. In view of the sustainability and affordability of occupational schemes, these characteristics should not be put at risk. - IORPs are funding vehicles where the interests of the scheme’s board/management are broadly aligned with the scheme members and beneficiaries. There is generally no conflict over the pursuit of a profit by the scheme at the expense of its members and beneficiaries. - The governance structure of IORPs is characterized by the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer. - Solidarity is often a further core element of occupational pension schemes. Members’ contributions are mostly calculated regardless of the age, gender and specific occupational risks. A further element of solidarity is the compulsory participation that prevents participants from leaving the scheme as is the case with individual and voluntary solutions. - IORPs have specific built-in security mechanisms that ensure the benefit security of pension schemes. Some pension schemes allow contributions from the sponsor and main benefit parameters to be modified by the employers and the employees’ representatives. - For DB- and hybrid DB/DC schemes, in at least some Member States, employers have the ultimate responsibility for fulfilling the pension promise. A very important aspect is the long-term investment perspective of IORPs since 	
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		<p>they administer solely pensions. Therefore, long-term developments are more important than the short-term distortions that have to be considered under the Solvency II regime.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Because of the significant differences between IORPs and life insurance companies, the application of Solvency II to IORPs would be inappropriate and inexpedient, as this would lead to unbearable financial burdens for IORPs as well as for employers and employees. Instead, IORPs need a separate supervisory regime in which the framework currently in effect with respect to solvency capital requirements, a framework which has proven adequate in the course of the three recent crises in 2002, 2008 and 2011 should essentially be preserved. <p>Conclusion:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Occupational pensions are necessary in order to provide an adequate total replacement rate and avoid old-age poverty. <input type="checkbox"/> All future policy initiatives must be judged according to whether they contribute to expanding the coverage of occupational pensions or make employers shy away from voluntarily providing occupational pensions. <input type="checkbox"/> Pension funds in particular should have their own solvency regime with qualitatively-oriented risk-based solvency rules as defined in pillars 2 and 3 under Solvency II. <input type="checkbox"/> Internal impact studies clearly show that an application of Solvency II to IORPs (an average German Pensionskasse) will lead to a multiple increase (factor 8-10) of solvency capital requirements compared to the current regime. <input type="checkbox"/> Requiring IORPs and therefore their sponsoring undertakings to make occupational pensions more secure by additional solvency capital will make occupational provisions less valuable because the benefit level will be reduced. <input type="checkbox"/> In order to keep European employers competitive in the world market, they should not be required to lock away extensive capital in pension funds just for safety reasons rather than using these financial resources for investments, research and the creation of jobs. 	
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			<input type="checkbox"/> We see no need to amend the current solvency requirements (Solvency I) as these have proven to be successful for IORPs as of yet – as seen during the last financial crisis; especially closed pension schemes and already existing promises must be excluded from new regulatory initiatives.	
26.	Bayer AG	General comment	<p>We would like to strongly emphasize, that in particular, capital adequacy requirements (“Solvency II”) should not be transposed into the IORP directive. We’re convinced, that this would inflict severe damage to IORPs and subscriber companies. Also, this would notably reduce the predisposition of companies to give commitments to their staff in the form of pension promises.</p> <p>This would run diametrically counter to the need to expand and strengthen occupational pension provision.</p> <p>Apart from that, incorporation of Solvency II would ignore the risks faced by IORPs in terms of subsidiary employer liability as well as of insolvency cover by the pension protection association (Pensions-Sicherungs-Verein - PSV).</p> <p>The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.</p>	Noted
27.	BDA Bundesvereinigung der Deutschen Arbeitgeberver	General comment	<p>The review of the Directive on Institutions for Occupational Retirement Provision (IORP directive) calls for special prudence, not least against the background that the most recent amendment has been implemented only in the last years by all member states. We would like to point out, that in particular, capital adequacy requirements (“Solvency II”) should not be transposed into the IORP directive. Imposition of these requirements would cause great harm to</p>	Noted

			<p>institutions for occupational retirement provision (IORPs) and subscriber companies, and would markedly reduce the readiness of employers to enter into occupational pension commitments. This would run diametrically counter to the need to expand and strengthen occupational pension provision. Incorporation of Solvency II would ignore the risks faced by IORPs in terms of subsidiary employer liability as well as of insolvency cover by the pension protection association (Pensions-Sicherungs-Verein - PSV). In particular the last finance crisis in 2009 showed, that the legal framework of the finance authority stood the test.</p> <p>The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.</p>	
28.	Belgian Association of Pension Institutions (BVPI-	General comment	<p>1. BVPI-ABIP regrets the short time it had to analyse and answer the different fundamental questions, therefore BVPI-ABIP reserves itself the right to come back on different questions in a later stage.</p> <p>2. BVPI-ABIP considers and wishes to underline the importance of the fundamental difference between a pension scheme and a IORP. BVPI-ABIP acknowledges that this difference might be relatively small in some member states, but stresses that this difference is enormously important in other member states (e.g. Belgium).</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The comment on pro-cyclicality has been recorded in the introductory chapter</p>

			<p>3. We seriously doubt whether there is a real need to review the IORP directive, and if yes, if the revision of the directive is the best way to resolve the underlining needs for revision:</p> <ul style="list-style-type: none"> - Only 84 of the 140.000 IORPs in Europe have cross border activities. However the practical experience indicates that this is not “due to the bad functioning of the actual directive”, but more due to the facts that: <ul style="list-style-type: none"> o IORPs are not for profit institutions that are only executing the agreements made by the social partners, so the IORPs themselves are not interested to look for “cross border opportunities” o The biggest “barriers” to organise a cross border IORP employers face will not be resolved by the actual proposals for a revised IORP directive, because they are more linked to hidden barriers, fiscal issues, local resistance, complexity, etc.” - Since the start of the works on the revision of the IORP directive, the further development of pan-European IORPs almost came to a standstill. - Despite the ambition to review/limit the wide range of exclusion from the scope of the directive, the actual proposals leave all the exclusions untouched. - Hereby the prudential framework for the IORP that are already strongly regulated, will be strengthened while the non-regulated institutions will stay unregulated? <p>4. BVPI-ABIP considers that the debate on (occupational) pension’s provision and the rules by which occupational pensions are provided is a political debate and not a technical one. We therefore would like to call for a political debate within the different European Institutions and with all different stakeholders and national governments/parliaments.</p>	
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		<p>As only part of occupational pensions are managed via IORPs, and even as occupational pensions are only part of and strongly interlinked with the broader pension policy, a review of the IORP cannot be handled separately from other (national and European) initiatives with regard to pension policy like the forthcoming EC White Paper on Pensions, an eventual review of the insolvency directive, the EU 2020 strategy, the different EU coordination directives on social security, and the different macro-economic and growth related initiatives, etc.</p> <p>5. BVPI-ABIP agrees with the fundamental premise and starting point (which is already part of the actual IORP directive) that the supervisory regulation of pension institutions should be risk based and support equally the objective to achieve sustainable, safe and adequate pensions.</p> <p>In the draft response to the Call for Advice the principle of risk-based supervisory regulation is however extended to imply that risk-based capital requirements should be necessary and should be harmonised across Europe.</p> <p>BVPI-ABIP is deeply concerned the implementation of the proposals, made by EIOPA might lead to:</p> <ul style="list-style-type: none"> - A very important obligatory increase of the sponsor contributions, which would create, - A new extra incentive for the continuous transition from DB to DC schemes, or even - to close or winding up of pension schemes - Or the transfer to unit-linked-like "insurance" solutions in which the members are less protected (e.g. "captive's", or in Belgium Branch 23, etc.) 	
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		<p>We consider moreover that this will not lead to the achieved better protection and safety for the pension scheme members and might imply the end of most of the social not-for-profit and not market driven pension institutions (like IORP's in Belgium and many other member states are).</p> <p>The key objective should be pension security for members; BVPI-ABIP fears strongly that the holistic balance sheet approach will not contribute to this objective.</p> <p>6. The basis for the review of the IORP directive should be the IORP directive itself and the different reports published by CEIOPS. As IORPs are fundamentally different from insurance companies, it is not appropriate to use the framework of the Solvency II directive as a starting point.</p> <p>BVPI-ABIP considers that it is from uttermost importance to treat fundamentally different institutions in different ways (not a one size fits all approach), because not-for-profit institutions differ them self among other this by their capital structure, governance, and goals.</p> <p>A revised IORP review should not cover the Pillar I issues out of Solvency II, but only the Pillar II and Pillar III elements. Therefore, the BVPI-ABIP believes that the pillar I elements of Solvency II should not be adopted to cover IORPs. On the other hand, many elements from pillar II exist already for Belgian IORPs and could be adapted to cover the IORPs as long the principle of proportionality is respected.</p> <p>7. BVPI-ABIP is strongly concerned about this balance sheet approach because,</p>	
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		<p>among other things, does not make a difference between the solvency of the pension scheme (pension promise) and the solvency of the IORP. Despite the fact that they are links between both they do not overlap because they are not identical.</p> <p>BVPI-ABIP is also deeply concerned about the explicit valuation of sponsorcovenants in the Holistic Balance Sheet, because:</p> <ul style="list-style-type: none"> - It will be extremely difficult to value this covenants and this will impede instead of easy the intended harmonization and comparability of coverage ratios and risks across Europe - It is totally unclear if there will be an impact and if yes how on the balance sheets of the sponsor/employer, which implies a real risk how this sponsor covenants in a next step, should be funded. Preliminary discussions with auditors of employers learns us that they will probably require that the employers will recognize this covenants (which do represent real liabilities of the IORPs but only a overfunding / extra risk buffer) as a liability on their balance sheets. <p>8. IORP's deal with long term commitments. They are an important source of institutional investment, and can they play a stabilising role in crisis situations. IORP's are true long term investors. Therefore standards should be drafted in such a way that they are not procyclical nor intensify short term trends.</p> <p>If all long term investors' turns to the same risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil. This creates a huge systemic risk. (e.g. IMF working Paper WP/11/18, August 2011 "Possible unintended consequences of Basel III and Solvency II", or Committee on the Global Financial System (Bank of International Settlements) Paper No 44, July 2011 "Fixed Income Strategies of Insurance Companies and IORPs")</p> <p>The use of market prices for calculating pension assets and liabilities, especially</p>	
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		<p>the application of spot discount rates, and the implementation of quantitative risk-based funding requirements aggravate indeed pro-cyclicality in IORP investments.</p> <p>Applying a solvency II type approach to IORPs will have consequences on the benefit levels and the social protection models in member states.</p> <p>But it will also have important consequences that go well beyond the pension benefits themselves. The derisking a consequence of the market value approach will have an impact on the capital markets. Who will be there to take long term commitments? Who will be there to finance illiquid assets?</p> <p>The proposed changes will have macro-economic impacts on employment and growth which will probably not be in line with the Europe 2020 strategy.</p> <p>9. BVPI-ABIP wishes to stress that proportionality should be always taken in account when drafting and applying regulations. The rules must not constitute a hurdle for employers and social partners to provide pension benefits via IORP's or IORPs to operate</p> <p>10. A new directive should not lead to the shift from one type to another, e.g. from defined benefit to defined contribution or hybrid schemes or vice versa, or from collective to individual, or occupational to private.</p> <p>11. BVPI-ABIP considers also that pension policy fundamentally differs from consumer policies. Starting from a consumer protection idea supposes that IORPs are commercial operators providing a product and scheme members would be consumers of this product. The benefits managed by IORPs are not</p>	
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		<p>like that. In Belgium and many other member states, pension benefits of employees come from pension schemes that are embedded in the labour relations and are part of national social and labour law. In many cases the different choices follows out of collective choices by the social partners and can in no way be compared to consumer-like relations.</p> <p>12 The freedom of social partners to negotiate on occupational pensions should not be hampered.</p> <p>1. BVPI-ABIP regrets that Art. 28 of the Charter of fundamental rights, which is now binding for any EU-action, is not mentioned in the draft response of EIOPA. In many member states non-profit IORP's on collective agreement basis play a very important role, especially to widen the coverage of supplementary pensions systems. The jurisdiction of the ECJ (see C-45/09 – Rosenblatt, paragraph 67 et seqq.) attributes to the social partners a wide power of discretion by collective bargaining, also on occupational pension systems. Art. 153, 154 and 155 of the Lisbon treaty also recognises the role of social partners and social bargaining in shaping social policy. This power has to be safeguarded even by any European action.</p> <p>13. One main challenge for policy makers should be to extend the provision of workplace pensions of EU citizens who presently are not covered by workplace pensions. BVPI-ABIP would like to remind EIOPA and the Commission of its intention not to negatively affect the supply and cost-efficiency of occupational retirement provision in the EU.</p> <p>14. Given the multiple potential negative impacts envisaged in the revision of</p>	
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			the IORP Directive, BVPI-ABIP advises EIOPA to plead for different thorough, adequate impact assessment studies carried out before any level 1 legislative proposals are made. This impact studies should cover the impact on the provision of occupational pensions by employers and social partners as well as both micro- and macro-economic impacts of the revision.	
29.	BIPAR	General comment	<p>BIPAR is the European Federation of Insurance and Financial Intermediaries. It groups 51 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.</p> <p>Most of the topics in EIOPA's draft response to the Commission's Call for Advice on the review of Directive 2003/41/EC do not concern directly intermediaries. However, this does not mean that this draft response is not of interest to us. Insurance intermediaries are active in the area of privately funded individual pensions as well as in the area of occupational pension schemes. They have clients who are employers who have placed the pensions of their employees in pension schemes operated by pension funds/IORPs. The intermediary advises for example the employer (and the beneficiaries/employees) on the pension scheme on an ongoing basis.</p> <p>Well regulated and supervised IORPs play an important factor in obtaining safe and reliable pensions. A level playing field between all financial market players providing occupational pensions, including IORPs, contributes to this.</p> <p>For these reasons, BIPAR would like to give feedback to EIOPA on a selection of topics. Please see below our position on these topics.</p>	Noted
30.	BlackRock	General comment	<p>BlackRock is pleased to have the opportunity to respond to the EIOPA Call for Advice on the review of Directive 2003/41/EC on Institutions for Occupational Retirement Provision (IORPs). We are deeply concerned about the financial future of European pensioners. BlackRock manages around €282 billion of</p>	<p>Noted</p> <p>The comment about the high degree of diversity of pension</p>

		<p>assets for more than 1,400 European pension schemes, including defined benefit (DB) schemes, defined contribution (DC) schemes and 67 national pension reserve funds, in a number of European countries including Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden, and the UK.</p> <p>We summarise our views on the Call for Advice below and include more detailed comments in our attached response.</p> <p>BlackRock recommends that the European Commission carefully considers the very real impact of the holistic balance sheet approach on Europe’s pension schemes and pensioners. Given the diversity of pension arrangements between employers and employees across the EU Member States, we believe that a comprehensive harmonised approach is neither appropriate nor desirable for European pensioners. A common methodology, whether based on the holistic balance sheet approach or alternative approaches, would only be appropriate for those pension funds wishing to operate on a cross border basis.</p> <p>BlackRock is also concerned that the proposed measures do not take into account the different mechanisms that already exist in a number of Member States. In some countries, such as the UK and Netherlands, the level of security is already very high. Additional regulatory requirements would result in unnecessary compliance costs without commensurate benefits for pensioners.</p> <p>Substantial differences exist between IORPs and life insurance companies. Consequently, we do not believe that it is appropriate to apply similar prudential treatment to IORPs and life insurance companies. The application of elements of the Solvency II regime on pension schemes would substantially increase funding requirements for pension funds. The administrative burden and financial costs would also impact significantly investment performance, particularly for smaller and medium-sized IORPs, reducing considerably the level of benefits for pensioners.</p> <p>Finally, the application of solvency II to pension funds would discourage pension schemes to invest in equities making it harder for European companies to raise capital.</p>	<p>arrangements across the EU member states weakening the case for harmonisation has been recorded in the introductory chapter</p> <p>The comment about differences in tax treatment as a barrier to cross-border arrangements has been recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>
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		<p>liabilities and traditions of pension provision across EU Member States. A common methodology would therefore only make sense for pension funds that wish to operate on a cross border basis.</p> <p>We do not believe that EIOPA’s recommendation will encourage greater use of cross border pension schemes in the EU. Even if common solvency rules are adopted by EU pension funds, other factors, such as differing national tax treatments, will still represent a greater obstacle to cross border arrangements.</p> <p>Some countries already have established regulations in place governing pension security. The danger is very real that IORPs in those countries will face considerable costs in complying with new regulations without any commensurate benefit accruing in terms of improved safety for members. IORPs are typically much smaller organisations than insurance companies and so will bear a disproportionately higher compliance cost which will ultimately be passed on to members.</p> <p>BlackRock therefore recommends that regulatory focus be directed at identifying minimum requirements in order for schemes to qualify for cross-border distribution rather than attempting to apply comprehensive new requirements to a wide and diverse range of existing national schemes.</p> <p>Solvency II-based approach is inappropriate for IORPs</p> <p>EIOPA has been asked to answer relatively narrow questions about the incorporation of elements of the Solvency II Directive into the IORP Directive. BlackRock recommends that EIOPA questions the European Commission’s assumption that such an approach is appropriate for IORPs.</p> <p>Pension funds are fundamentally different from insurance companies. This makes the application of elements of Solvency II to pension funds inappropriate. The differences include but are not limited to:</p> <p>Insurance companies</p> <p>IORPs</p>	
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		<p>There are around 140,000 IORPs in Europe of which only 84 are cross-border. <input type="checkbox"/> The median size of pension funds is far smaller than that of insurance companies.</p> <p>Finally, security should not be seen as being synonymous only with solvency; governance or supervisory review process and information disclosure to supervisory authorities and to beneficiaries also have a crucial role to play.</p> <p>Negative impact on sponsor support for IORPs</p> <p>We share the European Commission's objective of safer pension provision. However, we are concerned that the application of some elements of Solvency II via the holistic balance sheet approach will increase, significantly, funding requirements for pension funds and unnecessarily penalise European pensioners.</p> <p>Research carried out by the NAPF shows that the 'holistic balance sheet' approach would increase substantially the cost of providing DB pensions in the UK. The shift to valuing Technical Provisions on a risk-free basis in order to obtain the best estimate of liabilities would, for example, increase, on average, Technical Provisions by 27% in the UK. This would equate to an approximate €337 billion increase in scheme funding requirements just for the UK.</p> <p>Such a significant increase in funding requirements for European pension funds would have a number of consequences:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The additional funding demands on sponsoring employers would deprive them ex ante of an amount that could be used to tackle ex post problems. This would weaken these companies, increasing their insolvency risk and undermining their credit ratings. The 'sponsor covenant' would be weaker accordingly. <input type="checkbox"/> The resulting financial burden would reduce the ability of the sponsoring employer's to make investments and create jobs. <input type="checkbox"/> Employers would be forced to reduce or cease providing pension benefits 	
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		<p>to their employees, resulting in less generous benefits for scheme members. We would see a further shift from DB to DC pensions, increasing the number of members with a greater exposure to investment risk. A Solvency II-style regime might actually undermine pensions security, as well as reducing adequacy – contrary to the Commission’s objectives as set out in the July 2010 Green Paper Towards Adequate, Sustainable and Safe European Pensions Systems.</p> <p>BlackRock believes this outcome to be especially inappropriate at a time when European pensioners are being asked to take greater responsibility for their own financial futures and Member States are implementing greater budgetary discipline. It is vital to find the right balance between a high level of security for all occupational schemes and European citizens’ access to complementary occupational and private pensions.</p> <p>Negative impact on investment</p> <p>Solvency II will affect pension funds even more fundamentally through the introduction of a capital charge associated with holding risk assets. In the past, regulatory regimes were relatively insensitive to asset risk. This was unrealistic and led to a plethora of responses from national regulators.</p> <p>The proposed Solvency II regime will allow pension funds to calculate the required solvency capital, including that associated with asset risk, either by reference to an internal model for which they need to seek regulatory approval or through the use of standard formulae. Most pension funds, particularly in early years, will use these standard formulae. Unfortunately, the relative risk asset charges are highly likely to discourage pension funds from holding most non-government risk assets, including long-term credit, structured credit, equities and alternatives. In order to match their risk-free liabilities, pension funds will therefore shift investments out of equities and other return-seeking assets and into bonds and other risk-free investments. The European Private Equity and Venture Capital Association (EVCA) estimates that this could trigger a reduction of about 5 per cent of total assets invested in European shares and that this would translate to a €750 billion loss to European stock markets.</p> <p>This, again, is likely to be less capital available to companies for investment,</p>	
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			<p>lower growth prospects in Europe, and reduced pensions for European pensioners.</p> <p>BlackRock also fears that this will lead to increased pro-cyclicality. In times of stress, IORPs will be compelled to sell non-government risky assets to raise cash and find high quality liquid bonds to meet the capital requirements. This will make it even more difficult for companies to raise capital in Europe.</p> <p>Enhanced information to members/beneficiaries</p> <p>With regards to information to members/beneficiaries, we welcome EIOPA's emphasis on transparency and disclosure, particularly as the shift towards DC pension systems accelerates. We believe the idea of an adapted Key Investor Information Document (KIID) within the scope of the IORP directive is an interesting and potentially valuable development, even if a KIID for pensions would be a very different kind of document compared to a KIID for investment funds. However, the information provided to individuals should be fairly simple and digestible. BlackRock is of the view that the information document should primarily focus on the engagement of members towards pensions in general.</p>	
31.	BNP Paribas Cardif	General comment	<p>BNP Paribas Cardif (www.bnpparibascardif.com) is the Life, Property & Casualty insurance subsidiary of BNP Paribas. It develops products, marketed under two brands. Products distributed through the BNP Paribas retail branch network in France are branded BNP Paribas. Those distributed by other channels in France and in international markets are branded Cardif.</p> <p>BNP Paribas Cardif is one of the top 15 european insurers. Its life and non-life insurance units have received an AA- rating from Standard & Poor's.</p> <p>It had gross written premiums of 25.3 billion euros in 2010. With a diversified geographic footprint, BNP Paribas Cardif has strong positions in Europe, Latin America and Asia. In 2010, BNP Paribas Cardif generated 48% of its gross written premiums outside France.</p> <p>It counts close to 9,000 employees, 73% of them outside France.</p>	Noted

			<p>BNP Paribas Cardif is grateful to the EIOPA for the opportunity given to express our views on the revision of the IORP Directive.</p> <p>As a beginning we would like to state that the goal of the pensions European legislation must be to ensure a sound single market in the European union with a good protection for citizens and with a complete level playing field between providers, in particular between IORPs (subject to the IORP directive) and insurers (currently subject to the life insurance Directive 2002/83/CE and partially to the IORP directive; potentially subject in the future to Solvency II).</p> <p>Solvency rules for IORPs should seek to guarantee a high degree of security for the beneficiaries, who must receive equal protection under risk-based economic rules whilst looking for an adequate prudential regime for long term guarantees, both for IORPs and insurers.</p> <p>The aim for the Commission to launch a consultation on the revision of the IORP directive was in the first place to develop the cross border activity and moving towards a supervisory regime funded on a risk based approach.</p> <p>1. Cross border activity</p> <p>For cross-border activity to develop, it is necessary at European level to ensure level playing field within all occupational pension providers. This simple state leads to the following principle: substance must prevail over form.</p> <p>BNP Paribas Cardif considers that any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime.</p> <p>Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in</p>	
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			<p>common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop.</p> <p>Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. BNP Paribas Cardif considers that adequate prudential requirements for both IORP and Solvency II directives should be sought in order to ensure a consistency between stakeholders.</p> <p>According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. BNP Paribas Cardif urges the Commission to examine this issue as suggested by EIOPA whilst maintaining the possibility for occupational retirement provision business of insurance undertakings to be within the scope of the future directive.</p> <p>A transitional solution should be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive:</p> <p>Where, on the date of entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive 2003/41/EC, such home Member States may, until the review of Directive 2003/41/EC is completed, continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to comply with Articles 1 to 19, 27 to 30, 32 to 35 and 37 to 67 of Directive 2002/83/EC as in force on the last date of application of Directive 2002/83/EC.</p> <p>In order to retain a level playing field until the review of the IORP Directive is completed a transitional period for occupational pension provision should be introduced into the Solvency II Directive.</p>	
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			<p>2. Risk based approach</p> <p>The second point raised by the Commission is to propose an architecture funded on a risk based approach for the future IORP directive. If we look at the risks, it is to assess an appropriate level of protection for members/beneficiaries. BNP Paribas Cardif regrets that EIOPA seems to leave to the Commission the issue of protection of members/beneficiaries.</p> <p>In terms of risk-based regime, Solvency II is a benchmark. If the calibration of Solvency II regarding long-term commitments and in particular pension scheme is not necessarily adequate, the principles of the Framework Directive can be very useful.</p> <p>In our view, the establishment of a risk based approach means that the following principle should prevail: same risk, same rules, same capital ... and same protection.</p> <p>Consequently, technical rules adopted for pension should be integrated in Solvency II.</p> <p>A future prudential regime built according to these principles must reflect the specificities of each IORP (sponsor covenant, possible reduction of benefits ...) and that is why BNP Paribas Cardif supports the development of a holistic balance sheet that will bring greater transparency. In a citizen's protection approach, this holistic balance sheet should be made public.</p>	
32.	BNP PARIBAS SECURITIES SERVICES	General comment	<p>BNP PARIBAS SECURITIES SERVICES welcomes the opportunity to contribute to the EIOPA Call for advice on the review of directive 2003/41/EC – second consultation .</p> <p>As BNP PARIBAS SECURITIES SERVICES is a major European player in the depositary activity with a presence in most European markets, it can provide the European Regulators with a very constructive view on concrete and</p>	Noted

			<p>operational aspects that need to be taken into consideration when defining the depositary function. At the same time, one of BNP PARIBAS SECURITIES SERVICES' key priorities is to make proposals which enhance the harmonisation of the depositary function at the European level and which consequently reinforce the level of investor protection within the EU.</p> <p>In its submission, the response of BNP PARIBAS SECURITIES SERVICES to the EIOPA consultation will focus on the depositary issues.</p> <p>BNP PARIBAS SECURITIES SERVICES agrees with the aim of the EIOPA's advice to strike the appropriate balance between the Directive's objective of ensuring a high level of members/beneficiaries' protection by introducing a requirement for compulsory appointment of a depositary when the risks associated to the safekeeping of assets and the investments are borne by the members/beneficiaries, while refraining from placing the entire responsibility on depositaries which would adversely impact members/beneficiaries through increased costs .</p>	
33.	Bosch Pensionsfonds AG	General comment	<p>We welcome the opportunity to comment on the EIOPA Response to the Commission's Call for Advice on the review of the IORP Directive:</p> <p>Remarks on characteristics, efficiency and role of occupational pensions:</p> <p>Occupational Pensions offer Europe's citizens the most efficient way to accumulate capital for retirement. At its core, a workplace pension is a benefit an employer provides to its employees, not a product sold to consumers. Occupational pension provision in contrast to insurance is not a business. Occupational pensions are per definition directly linked to employers; IORPS are generally social institutions of the sponsoring companies - who typically bear administration costs and provide employer covenants, in many cases combined with an efficient insolvency protection. Due to their collective structure and their not-for-profit character, occupational 2nd pillar pensions are far superior to individualized, more expensive and less efficient 3rd pillar concepts. No individual can buy the same efficiency on the market.</p>	Noted

		<p>There is evidence that the current severe member state (MS) debt crisis in the EU will have a future impact on the social systems in the MS. The MS can no longer afford to support with scarce tax resources or fiscal subsidies inefficient or less efficient concepts of retirement savings. It will be crucial that resources are used in the best interest of EU citizens, with clear priority given to occupational pension vehicles, which achieve the best possible results at the lowest possible cost.</p> <p>Targets of IORP II and prudential regulation for the European 2nd pillar:</p> <p>A tailor-made regulatory framework for IORPs should support this overall strategy to establish and develop a highly efficient structure of occupational pensions in Europe in the peoples' best interest.</p> <p>Supervisory legislation for the insurance industry is predominantly seen as a form of "consumer protection" to achieve a balance between the commercial interests of the insurance industry and individual consumer interests. For occupational pensions / IORPs, which are per definition sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the perspective of prudential regulation must be different.</p> <p>The CfA states: "The new supervisory system for IORPs should not undermine the supply or the cost-efficiency of occupational retirement provision in the EU." (CfA 1.3).</p> <p>We should go even one step further: The new supervisory system for IORPs should improve the supply and the cost-efficiency of occupational pensions to employees and encourage employers to establish and expand as many efficient and effective IORPs in the MS - as well as avoiding anything that could damage or endanger these "not-for-profit" IORPs.</p> <p>So taking inspiration from Recital 7 of the current IORP Directive, it is suggested, that the main supervisory objective under IORP II is formulated as follows:</p> <p>".... to achieve the main objective of IORP supervision, namely both to clear the way for a sound development of occupational pension schemes provided by</p>	
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			<p>IORPs and to protect members and beneficiaries.”</p> <p>In addition we propose to define the purpose of the IORP II Directive as: “This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries.”</p> <p>“Sui generis” supervisory system for IORPs</p> <p>It is the declared aim of the European Commission to develop a “sui generis” supervisory system for IORPs and to use IORP I as a starting point for this. We are very concerned that EIOPA’s response follows in large parts a very different methodology: Solvency II provisions are instead used as the starting point. This requires IORPs to first evaluate Solvency II before they are able to assess the suitability of the proposals for their situation. This is too large a task for the amount of time available for this consultation and also means an unacceptable shift of the burden of evidence to the IORPs.</p> <p>We therefore strongly re-emphasize that IORP I and the specific circumstances, characteristics and needs of IORPs must be the starting point for the new Directive.</p> <p>Remark on MS options</p> <p>The existing Directive contains several MS options. For IORP II further MS options are intended for a number of different issues.</p> <p>MS options should be avoided in IORP II at all cost - they constitute obstacles for cross-border activity, allow “gold plating” through additional national regulation and could give rise to supervisory arbitrage.</p>	
34.	Bosch-Group	General comment	<p>The Bosch-Group has in Europe more than 180.000 employees and runs several IORP.</p> <p>We welcome the opportunity to comment on the EIOPA Response to the Commission’s Call for Advice on the review of the IORP Directive:</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is</p>

		<p>Remarks on characteristics, efficiency and role of occupational pensions:</p> <p>Occupational Pensions offer Europe’s citizens the most efficient way to accumulate capital for retirement. At its core, a workplace pension is a benefit an employer provides to its employees, not a product sold to consumers. Occupational pension provision in contrast to insurance is not a business. Occupational pensions are per definition directly linked to employers; IORPS are generally social institutions of the sponsoring companies - who typically bear administration costs and provide employer covenants, in many cases combined with an efficient insolvency protection. Due to their collective structure and their not-for-profit character, occupational 2nd pillar pensions are far superior to individualized, more expensive and less efficient 3rd pillar concepts. No individual can buy the same efficiency on the market.</p> <p>There is evidence that the current severe member state (MS) debt crisis in the EU will have a future impact on the social systems in the MS. The MS can no longer afford to support with scarce tax resources or fiscal subsidies inefficient or less efficient concepts of retirement savings. It will be crucial that resources are used in the best interest of EU citizens, with clear priority given to occupational pension vehicles, which achieve the best possible results at the lowest possible cost.</p> <p>Targets of IORP II and prudential regulation for the European 2nd pillar:</p> <p>A tailor-made regulatory framework for IORPs should support this overall strategy to establish and develop a highly efficient structure of occupational pensions in Europe in the peoples’ best interest.</p> <p>Supervisory legislation for the insurance industry is predominantly seen as a form of “consumer protection” to achieve a balance between the commercial interests of the insurance industry and individual consumer interests. For occupational pensions / IORPs, which are per definition sponsored by an employer, whose stakeholders’ interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the perspective of prudential regulation must be different.</p> <p>The CfA states: “The new supervisory system for IORPs should not undermine</p>	<p>recorded in the introductory chapter</p>
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			<p>the supply or the cost-efficiency of occupational retirement provision in the EU.” (CfA 1.3).</p> <p>We should go even one step further: The new supervisory system for IORPs should improve the supply and the cost-efficiency of occupational pensions to employees and encourage employers to establish and expand as many efficient and effective IORPs in the MS - as well as avoiding anything that could damage or endanger these “not-for-profit” IORPs.</p> <p>So taking inspiration from Recital 7 of the current IORP Directive, it is suggested, that the main supervisory objective under IORP II is formulated as follows:</p> <p>“... to achieve the main objective of IORP supervision, namely both to clear the way for a sound development of occupational pension schemes provided by IORPs and to protect members and beneficiaries.”</p> <p>In addition we propose to define the purpose of the IORP II Directive as:</p> <p>“This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries.”</p> <p>“Sui generis” supervisory system for IORPs</p> <p>It is the declared aim of the European Commission to develop a “sui generis” supervisory system for IORPs and to use IORP I as a starting point for this. We are very concerned that EIOPA’s response follows in large parts a very different methodology: Solvency II provisions are instead used as the starting point. This requires IORPs to first evaluate Solvency II before they are able to assess the suitability of the proposals for their situation. This is too large a task for the amount of time available for this consultation and also means an unacceptable shift of the burden of evidence to the IORPs.</p> <p>We therefore strongly re-emphasize that IORP I and the specific circumstances, characteristics and needs of IORPs must be the starting point for the new Directive.</p>	
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36.	BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIA	General comment	<p>The imposition of new Solvency II standards to pension funds are unnecessary, a hindrance to economic growth at the worst possible time and a breach of the EU's subsidiarity principle</p> <p>The BVCA welcomes the opportunity to respond to EIOPA's final consultation on the Call for Advice (CfA) on the review of the Directive 2003/41/EC.</p> <p>The British Private Equity & Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. The BVCA Membership comprises over 230 private equity, midmarket and venture capital firms with an accumulated total of approximately £32 billion funds under management; as well as over 220 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents. Additional members include international investors and funds-of-funds, secondary purchasers, university teams and academics and fellow national private equity and venture capital associations globally.</p> <p>The BVCA's position remains that the application of a Solvency II-type standards to IORPs is unnecessary and would hamper economic growth. In the main, we have confined our comments to making this case rather than</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

			<p>addressing those concerning application and implementation. We look forward to the impact assessment that will be carried out next year and would view that as a key litmus test for the decision to proceed. In the wake of the Financial Crisis, we do understand the need to pass certain regulations in the name of restoring stability to our financial system. However, in the case of pension provision, we are considering long-term liabilities with appropriate investment strategies. As a response to the current economic and financial turbulence, these provisions are wholly inappropriate. Rather than shoring up the stability and functionality of the European economy, these aims could actually be placed in jeopardy.</p> <p>UK Private Equity</p> <p>Private equity is medium to long-term finance provided in return for an equity stake in potentially high growth companies, which are usually, but not always, unquoted. Generally speaking, regardless of whether a private equity fund is listed or not, their activities are similar. Investment opportunities are sourced and screened by private equity firms in order to arrive at a valuation. The transaction will be financed using equity provided by fund investors (notably pension funds), and in some cases debt raised from banks. The private equity firm will then actively manage the investment for the holding period (typically five to ten years), seeking to generate operational improvements in order to increase the value of the company. In many private equity transactions, the managers at the portfolio companies will be retained and offered an equity stake in the company, in order to align the interests of both parties. Returns are realised for investors through exiting the deal; this can be through floating the company on a public stock exchange (IPO - initial public offering), a trade sale, or a secondary buyout, whereby the portfolio company is sold to another private equity firm.</p>	
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		<p>Private equity funds managed in the UK currently back around 4,700 companies, employing around 1.6m people on a full-time equivalent basis (FTEs) across the world. Of these, around 810,000 FTEs are employed in the UK.</p> <ul style="list-style-type: none"> <input type="checkbox"/> In 2010, 1,073 companies, employing around 313,000 FTEs, were invested in by private equity funds managed in the UK. Of these, 823 were in the UK, employing around 158,000 FTEs. <input type="checkbox"/> Of the companies invested in during 2010, around 65% were small companies, with around a further 20% being medium-sized companies. <input type="checkbox"/> In 2010, 18 companies experiencing trading difficulties were rescued by BVCA member firms, helping safeguard 6,400 jobs <p>Over the medium to longer term, the industry continued to outperform other asset classes. Over the past three years, one of the most challenging periods for the financial services industry, private equity produced an annual return of 6.7%, compared with 2.4% for Total UK Pension Fund Assets and 1.4% for FTSE All-Share. Over a ten-year period, this outperformance is more marked, with returns of 14.6% per annum for private equity, while Total UK Pension Fund Assets and FTSE All-Share generated 4.5% and 3.7%, respectively.</p> <p>The Importance of Pension Funds</p> <p>Pension funds are vital contributors to the European economy. They own 20% of UK equities. They are key investors in private equity funds.</p>	
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			<p>UK private equity and venture capital raise money from a variety of sources with a view to investing in companies for an extended period of time, before exiting and realising a gain for those investors. The source of our funds is set out below but pension funds represent our most significant investors. In 2008 they made 35% of our funds for a total of £8.4bn. If the pension funds industry decided that solvency requirements were too great and pulled back from private equity, the economic consequences would be extremely damaging to the European economy.</p> <p><input type="checkbox"/></p> <p>It is important to note that the capital raised is deployed right across Europe, not just the UK. As a global centre for private equity, UK funds are able to raise money internationally but invariably invest it regionally and locally. As can be seen from the table below, nearly half of the capital raised is deployed in the rest of Europe.</p> <p><input type="checkbox"/></p> <p>Taking away this key source of investment would have a chilling effect on the European economy. As can be seen from the table above, the fund raising climate is already difficult with a significant drop off in funding in 2009 followed by a slight recovery. If we consider venture capital the picture is bleaker still.</p> <p>It is important to state that we welcome the Commission's focus on European venture capital. In particular, we note the recent regulation on designated 'European Venture Capital Funds' which will better enable cross-boarder</p>	
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			<p>fundraising and investment for funds committed to investing in SMEs. Furthermore, the recent MOU signed by the European Fund Investors Network committing themselves to developing proposals for a new European venture fund of funds is a welcome development. But if such initiatives are to bear fruit, more capital is needed. We must ensure the fundraising climate is not rendered more difficult by EIOPA-CP-11/006. As can be seen from the chart below, fundraising from all sources but notably from pension funds is in decline for European venture capital. As a sector it is now over reliant on Government agencies. The BVCA and its European partners are working with Government on ways to encourage institutional investors to look again at venture capital. Because of historically poor returns, this will likely prove impossible if Solvency II standards are imposed on pension funds. This will mean the 'venture passport' and the new fund of funds will likely be moribund.</p> <p>□</p>	
37.	BT Group plc	General comment	<p>British Telecommunications plc is the sponsor of the BT Pension Scheme, which is the UK's largest corporate pension scheme. As at 31 December 2010 the Scheme held assets of around £37 billion and was responsible for around 330,000 beneficiaries under a defined benefit structure. This includes around 50,000 employees currently earning defined benefits.</p> <p>We strongly believe that there is no need for amendment to the current IORP directive. The European Commission should state explicitly what it wishes to achieve from this review, supporting its assertions with evidence of how the</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has</p>

		<p>current regime fails to meet those objectives</p> <p>The reasons not to amend the IORP include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The current IORP Directive already provides a high degree of security to pension scheme members and the prudent funding regime in the UK has proved robust throughout the recent economic turbulence. <input type="checkbox"/> The UK already has a very well governed, prudent and transparent regime for IORPs including a strong Pension Regulator and a Pension Protection Fund. Additionally, they are established in a trust based structure (with separate Trustees who have their own legal obligations to protect members). <input type="checkbox"/> There are key differences between IORPs and insurance products. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide a social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions. <input type="checkbox"/> EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPs ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be imposed on IORPs, provided that certain adjustments are made to allow for the security provided to IORPs by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether. This is a key differentiator between the two 	<p>been noted in the introductory chapter.</p>
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		<p>regimes which justifies different regulation.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Because of the long-term nature of pension liabilities and the fact that most schemes are strongly embedded in national social and labour law not only are pension funds soundly regulated, but a review would violate the EU's subsidiarity principle <input type="checkbox"/> Introduction of increased solvency requirements would reduce investment in growth and job creation. The CBI has estimated that the impact of the changes could add €500m to pension liabilities in the EU. Any increases in pension liabilities will have a significant economic impact as companies need to divert their cash away from investing in growth and jobs creation. <input type="checkbox"/> Higher solvency requirements will reduce the overall adequacy of benefits provided to employees. An increase in the cost of benefits would jeopardise the sustainability of existing provision and will lead to lower provision overall. <input type="checkbox"/> Changes to existing rules are likely to destabilise already volatile financial markets. Under a Solvency II approach schemes would effectively be forced to move into assets traditionally viewed as 'safer', which would increase volatility and damage the ability of firms to finance in capital markets. Instead of investing in a wide range of assets including equities, corporate debt, derivatives and gilts, schemes would be likely to switch to 'risk-free' investment in gilts. This could lead to a substantial disincentive for long-term investment in corporate debt and equity, which could have permanent impacts on the willingness of pension schemes to invest in the wider corporate economy. <input type="checkbox"/> Applying a solvency regime to IORPS is unlikely to achieve the European 	
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		<p>Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would increase the security of some IORP promises in the short term, in many cases providing a level of security far beyond what is necessary. The cost of such security would, however, be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors likely to respond to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs.</p> <p><input type="checkbox"/> A solvency II regime for IORPs is unlikely to meet the objectives set out in the current review of the IORP directive. Harmonising the funding regime for pensions would not be likely to increase the take-up of cross-border schemes. If anything, increasing the funding requirements would make such schemes even less likely. The obstacles to cross-border schemes are rather to be found in the complex legislative framework attaching to such schemes, to the stringent funding standards already applying to defined benefit cross-border schemes (which are required to be fully funded at all times), and possibly to a genuine lack of demand for such schemes. The second reason for the review of the IORP directive is to 'allow IORPS to benefit from risk-mitigation mechanisms'. However, IORPs already have a number of risk-mitigation mechanisms in place that are precisely designed for the needs of pension schemes in specific Member States. Imposing inappropriate risk-mitigation strategies in the context of funding will lead to increased risks in other areas, in particular in terms of the longer term provision of IORPS to employees.</p> <p><input type="checkbox"/> A thorough and detailed impact assessment is critical before the Commission considers the options. This should include assessments on both pension schemes and the wider economy, e.g. the impact on economic growth, jobs, provision of pension benefits and how the capital requirements might affect equity, bond and other markets. Applying a solvency regime to pensions</p>	
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		<p>is likely to lead to massive additional costs for the sponsors of defined benefit IORPs. Research carried out by Punter Southall in December 2007 suggested that increasing technical provisions for the UK FTSE350 to Solvency II levels (including a switch to a risk-free discount rate and the application of a solvency capital requirement) could lead to an increase in funding of 85-90% compared to technical provisions on the funding basis used for the scheme's formal triennial valuation. Whilst market conditions and the precise composition of Solvency II have developed since that date, we think this still remains a useful indicative figure showing that the impact of a solvency regime being applied to pensions would be very substantial and would have a devastating impact on sponsors funding defined benefit IORPs.</p> <p><input type="checkbox"/> In addition to the funding costs, we also stress that imposing additional regulatory requirements, including the need to calculate solvency capital or place a value on the employer's covenant, would add considerably to the advice costs faced by IORPs and their sponsors. These could easily run into tens of thousands of pounds per annum for each of the around 7,000 UK defined benefit pension schemes. The quantitative impact assessment should also address these costs.</p> <p><input type="checkbox"/> Now is not the right time to consider this issue. The proposal to apply Solvency II to pensions with minimum alterations is premature in any case, since Solvency II remains untested for insurance companies. We believe that the regime should be tested in practice for a period of years before there is even any consideration of applying the same regime to pensions.</p> <p><input type="checkbox"/> Also, the current European market turmoil strongly suggests that now is not the time for Europe to be considering any major changes which could destabilise investment markets through changes to asset allocation by pension schemes. The current crisis has also challenged the very notion of 'risk-free' investment and it will be necessary to form a revised understanding of what risk-free means in practice before such concepts can be applied to pension schemes.</p> <p><input type="checkbox"/> It is also our firm view that it is fundamentally inequitable that unfunded arrangements are not being reviewed in conjunction with IORPs, when these</p>	
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			<p>arrangements are inherently less secure than funded plans.</p> <p>Our response focuses on the sections relating to funding and solvency.</p>	
38.	BT Pension Scheme Management Ltd	General comment	<p>The BT Pension Scheme welcomes this consultation on Solvency II which raises important issues about European pension provision.</p> <p>By way of background, the BT Pension Scheme is the UK's largest funded corporate pension scheme, managing assets worth around £37 billion and responsible for some 330,000 beneficiaries (data as at December 31st 2010) under a defined benefit (DB) structure. The BT Pension Scheme has closed to new members but will continue to play a role in paying benefits to pensioners for at least the next 70 years. It pays these pensions on behalf of the sponsoring employer, BT plc, which undertook the payment commitments as part of its contract with its employees; the sponsor provides a strong covenant which underlies the commitment to pay the contracted benefits. Like other UK defined benefit schemes, the BT Pension Scheme's beneficiaries also enjoy the security provided by a strong regulator in the form of the UK's Pensions Regulator as well as the Pension Protection Fund, which provides a further underpinning for the pensions commitments. The governance of the BT Pension Scheme is typical of UK corporate pension schemes, with a trustee board made up of half representatives of beneficiaries and half representatives of the corporate sponsor, and with an independent chair. The trustee directors feel directly the fiduciary duties of the trustee and note the trustee's duty to act in beneficiaries' best interests.</p> <p>These framing facts form the backdrop to our perspectives on the questions that EIOPA is asking. In particular, we note that the BT Pension Scheme, like most IORPs, is not a competitive organization: the benefits which it provides are simply associated with the employees and former employees of the sponsor. We therefore do not believe that concerns about competition and generating a level playing field are relevant in the context of the BT Pension Scheme and other</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

		<p>similar schemes.</p> <p>We clearly acknowledge EIOPA’s focus on protecting consumers, and support this as the basis for its approach to appropriate regulation of the insurance and pensions industry across Europe. We know that there have been parties within the financial sector which have misold pensions and other financial services in the past, and we believe that it is necessary to ensure that there is no repeat of such behaviours in the future.</p> <p>We played an active part in the discussions at the recent first annual conference held by EIOPA. We noted the comments from the European Commission that an annual report from a DB pension scheme which discussed the performance of the scheme assets over the year did not provide useful information to beneficiaries on the size or security of the pension delivered. We agree that from a consumer perspective the only disclosures from a pension provider which matter are what has changed over the year about the pension to which they are entitled, either now or into the future.</p> <p>This suggests that there does need to be a different approach to the treatment of defined benefit pension schemes where there is a solvent sponsor, and even of schemes whose sponsor is not solvent or approaching insolvency but where there is some system of guarantee of pensions even should the sponsor fail.</p> <p>For such schemes, there is no impact year on year from the pension scheme on the pensions which are due to be payable to the beneficiary: should there be any deficit, the sponsor stands behind it, and in extremis the pension protection system stands behind that. Thus, taking EIOPA’s appropriate focus on consumer protection it is necessary and appropriate to treat defined benefit schemes with a sponsor covenant, and with a pension protection system, differently from pension arrangements where performance of the scheme does have an impact</p>	
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		<p>on the pension payable to beneficiaries.</p> <p>Furthermore, we welcome the three differences which EIOPA acknowledges in the consultation between IORPs and insurance companies:</p> <ol style="list-style-type: none"> 1. The social context, and particularly the scope in many pension schemes for beneficiary representation on the governing body. This is an important safeguard and member protection which helps such IORPs to act in member interests, again reducing the need for regulatory intervention to protect beneficiaries. 2. The availability of additional capital from other parties should there be a shortfall. This, at least in terms of the sponsor covenant, is discussed above. 3. The number of IORPs raises a regulatory challenge. But we would note that some pension schemes are already subject to some significant regulatory oversight and input. Where this is the case we believe again that the need for a strict Solvency II funding approach is reduced because the regulatory checks and balances can apply more nuanced pressures to ensure that beneficiaries' interests are protected. <p>It is in this context that the BT Pension Scheme approaches the current consultation: as a defined benefit pension scheme with a solid sponsor covenant and a pension protection system, with member nominated trustees and firm regulatory oversight, we do not believe that there is any gap in the balance sheet of funding for the pension provisions that we are in place to support. While the aim of the Scheme is to perform such that we will provide fully for all of the pension liabilities which the sponsoring employer has undertaken, in practice there is limited impact year on year from our activities on the pensions which our beneficiaries can expect. As the European Commission has indicated, this is protection of beneficiary benefits is the key aim of EIOPA's work and the central policy aim underlying any application of Solvency II; given this, we believe that Solvency II needs to be applied with intelligence such that it does not apply any additional inappropriate burdens on schemes such as our own.</p>	
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			<p>We would also note the unfortunate unintended consequences of this approach in terms of the overall investment climate in Europe. At a time when long-term investment is needed more than ever, particularly into the infrastructure which will help the European economy grow, it would be hugely unfortunate to drive investment into short-term liquid instruments. The caution built into the Solvency II-style approach means that there is a real risk that money is taken from the productive segment of the economy and placed into unproductive investment at just the wrong moment for stabilizing and renewing growth in Europe.</p> <p>We believe that these potential macro-economic impacts need to be built into the now urgently required impact assessment of the current proposals.</p>	
39.	Bundesarbeitgeberverband Chemie e.V. (BAVC)	General comment	<p>Occupational pension systems are social schemes used by the employers and are therefore not a financial product traded freely on the market. A clear distinction between second and third pillar pension systems has to be made to safeguard the interests of both the collectively organised pension savers and the individual pension savers to ensure the functionality of the (different) regulatory frameworks.</p> <p>We would like to point out, that in particular, capital adequacy requirements (“Solvency II”) should not be transposed into the IORP directive. The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.</p>	Noted

			<p>BAVC is convinced that cross border activities can be better achieved without a far-reaching change in the IORP Directive and without creating a market for cross-border products in this area. This is mainly due the fact that national fiscal policies are not necessarily compatible, yet at the same time Member States remain sovereign in this policy area. Moreover, the decision to operate cross-border is not a decision made by IORPs but by the companies.</p>	
40.	BUSINESSEUR OPE	General comment	<p>BUSINESSEUROPE welcomes the possibility to comment on EIOPA's draft response to the Commission's call for advice on revision of the IORP Directive. We urge EIOPA and the European Commission to ensure a robust analysis of the economic impact of any proposals put forward, including the impact on the cost-effective provision of occupational pensions and on growth and job creation.</p>	Noted
41.	BVI Bundesverband Investment und Asset Management	General comment	<p>Reasons for reviewing the IORP Directive: the European Commission gave three main objectives for reviewing the IORP Directive:</p> <ul style="list-style-type: none"> <input type="checkbox"/> simplifying the setting-up of cross-border pension schemes; <input type="checkbox"/> securing modernisation of prudential regulation for IORPs which operate DC schemes; and <input type="checkbox"/> allowing IORPs to benefit from risk-mitigation mechanisms. <p>We are concerned by the fact that there are considerable trade-offs between the three objectives. In particular, while the implementation of some of the proposed new regulatory measures might increase the level of security offered by IORPs, many of these measures will increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity.</p> <p>There is considerable concern that the imposition of Solvency II style regulation on existing employer based pension schemes could add costs to employers or</p>	<p>Noted</p> <p>The point about capital for operational risks reducing benefits payable to members of defined contribution schemes has been recorded in the introductory chapter.</p>

		<p>reduce the level of benefits for beneficiaries. The additional burdens might outweigh any perceived benefits particularly for closed DB schemes and would accelerate the decline in provision of occupational retirement solutions. The first objective of encouraging cross border pension schemes would not seem relevant in many of these instances. In regard to DC pension schemes the application of additional capital for operational risks and other similar measures would reduce the benefits payable on retirement. Therefore, one of the main concerns of applying sections of Solvency II to pensions schemes would be that it has the effect to discourage the offering of pension savings through the workplace (which has been an effective way to create pensions savings schemes) or to discourage savings in DC style schemes, then the burden of supporting retirees would fall on the state. This would be an undesirable consequence, and one to be avoided, especially at a time when the authorities' goal should be to put more emphasize on the engagement of EU citizens towards pensions in general.</p> <p>We fully support the European Commission's view that all IORPs should benefit from the risk-mitigating security mechanisms at their disposal. In our view, the main goal of any revision of the solvency regime for IORPs in that direction would be to ensure the protection of pension scheme members and beneficiaries. This is not to guarantee that the level of security offered by all IORPs across Member States is the same, for the simple reason that Member States have different views on the relative merits of capital requirement and other mechanisms such as the level of commitment from the sponsor and pension protection schemes.</p> <p>We would also like to stress the fact that a risk-based approach should not be interpreted as a capital-based approach. The rules on governance, the supervisory review process, the rules on information disclosure to supervisory authorities and to members/beneficiaries are also essential to protect pension scheme members and ensure that they are properly informed about the exact nature of the pension promise.</p> <p>BVI is a strong supporter of the objective of maintaining consistency across financial sectors. In this respect, we agree that the new supervisory system for IORPs should be constructed in a way that it avoids regulatory arbitrage between and within financial sectors. We disagree, however, with the position</p>	
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			<p>that the approach and rules used for the supervision of life assurance undertakings subject to the Solvency II Directive should be the main reference for the proposed new measures and mechanisms. The implicit goal of the IORP Directive review should not be to harmonize the prudential regime for IORPs and life assurance undertakings.</p> <p>We recognize that EIOPA stressed that there are important differences between IORPs and insurers and tried to reflect those differences in its analysis. In our view, the most important differences are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The conditionality of pension rights <input type="checkbox"/> The duration of pension portfolios <input type="checkbox"/> Additional layers of protection, such as backup liability of the sponsor <input type="checkbox"/> IORPs are not profit making organisations and their mission is to provide secure and sustainable pensions to their members <input type="checkbox"/> IORPs are often much smaller than insurance companies <p>It is not possible to support the proposed new regulatory framework for IORPs without knowing what would be the likely quantitative impact of the new regimes, in particular regarding the additional costs and administrative burden. We would therefore like to stress the importance of a thoroughly conducted Quantitative Impact Study.</p>	
42.	Cable & Wireless Communications Plc.	General comment	<p>We welcome the opportunity to comment on the European Insurance and Occupational Pensions Authority (EIOPA) consultation on its draft advice to the European Commission in respect of the review of the Institutions for Occupational Retirement Provision directive.</p> <p>Background to Cable & Wireless Communications Plc</p> <p>Cable & Wireless Communications Plc (the Group) is a UK listed international telecommunications company incorporated and domiciled in the UK. We</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The point about capital for operational risks reducing benefits payable to members of</p>

		<p>operate through four business units being the Caribbean, Panama, Macau and Monaco & Islands. For the year ended 31 March 2011, we recorded revenue of US\$2.4 billion and profit before tax of US\$462 million.</p> <p>We had 7,213 employees on average during the year ended 31 March 2011. The Group operated a number of pension schemes for its current and former UK and overseas employees. In particular, we operate the Cable & Wireless Superannuation Fund (CWSF), a UK based defined benefit scheme which at 31 March 2011 had assets and liabilities measured under International Accounting Standard 19 Employee Benefits of US\$1,926 million and US\$1,941 million respectively. The CWSF has over 6,300 in-service, deferred and pensioner members.</p> <p>General comments</p> <p>As a Group, we do not wish to comment on the 95 specific questions raised in the consultation.</p> <p>However, we do wish to make a number of general comments which we believe are helpful to the EIOPA consultation. As a Group, we have always taken our obligations to the members of our defined benefit pension schemes very seriously and have always sought to conduct our business in a way that fulfils our obligations to the members of those schemes in full.</p> <p>We do not agree that applying an insurance style regime to pensions is the correct approach and, further, we do not agree that such a regime is necessary given the strong protection that is available to pensioners. In particular, we believe that the proposals would lead to a massive increase in funding costs for pension schemes. As a Group, we do not seek and indeed it is not in our</p>	<p>defined contribution schemes has been recorded in the introductory chapter.</p>
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			<p>interest to jeopardise members' benefits by investing pension scheme assets in overly risky investments. However, we believe that the proposals will lead to a change in pension schemes' asset allocations in a way that will act as a disincentive to long term investment in equity and corporate debt. Overall, it is hard to see why existing defined benefit schemes in the UK, such as our CWSF, which are not competing with insurers, need to be subject to similar solvency requirements.</p> <p>We understand that the EIOCPA is also considering requiring defined contribution schemes to hold additional assets to cover occupational risks. We believe this would add an additional cost burden to companies and defined contribution scheme members with little compensating benefit.</p>	
43.	CEA	General comment	<p>The CEA welcomes this opportunity to provide its comments on EIOPA's draft response to the European Commission's call for advice on the review of the 2003 IORP Directive. Furthermore, the CEA wants to express its gratitude for the extension of the deadline till January 2.</p> <p>In its core, the CEA believes that the review of the IORP Directive should be based on two key principles:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Same risks, same rules, same capital <input type="checkbox"/> Substance over form <p>The CEA took these two principles as the main thread throughout their response to the consultation.</p> <p>In order to achieve fair competition and consistency in prudential regimes, the CEA strongly supports the application of the 'same risks, same rules, same capital' principle to all financial institutions, including IORPs, providing occupational pension products. The Solvency II principles as agreed in the Solvency II Framework Directive follow a risk-based approach and create a sound prudential regime. These principles should serve as the basis for regulating all financial institutions providing occupational pension products provided the economically significant characteristics of the different pension</p>	<p>Noted</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p> <p>That occupational pensions business carried on by insurers also has a social and employment context has been added to the advice.</p>

		<p>products or schemes are taken into account. Moreover, for the parts of the total liability underwritten by the employer, these characteristics should be taken into account appropriately. Examples of specific occupational pension product characteristics that could be prudentially relevant include the use of sponsoring covenants such as contractually agreed additional payments by the employer payable to the IORP, pension protection schemes, or options to reduce benefit promises or payments. Comparable specificities should be taken into account in a similar way for all providers, including insurers.</p> <p>In line with the principle of 'substance over form', the CEA strongly believes that all financial institutions that provide occupational pension products should be regulated not on the basis of the legal vehicle through which products are sold, but rather according to the risks those products present to the provider, members and beneficiaries. As a result, Members' and beneficiaries' protection shall neither depend on the legal form of the institution they are affiliated to nor on the supervisory regime.</p> <p>Additionally, the CEA considers it extremely important that areas of political nature be solved at level 1. Furthermore, it should be ensured that the new rules should be accompanied by EU-wide level 2 implementing measures and level 3 guidance in order to reach a sufficient degree of harmonisation across the EU.</p> <p>Next, the CEA is surprised by the mention by EIOPA of three key differences between IORPs and insurers (2.6.5 – 2.6.7). The CEA acknowledges that there are in some member states differences between some products of IORPs and insurance companies that should be taken into account. However, these key differences defined by EIOPA tend to generalise and are therefore not accurate for the following reasons:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Not only IORPs have a social and employment context. Insurers too are active in the occupational pensions business. In 2008, life insurance companies had a market share of 47% in the second pillar provision of pensions. These are subject to similar social and labour laws as IORPs. Furthermore, employers are involved in the funding of their pension plans respective to the insurance undertaking too. Moreover, the CEA highlights that the third pillar provisions 	
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			<p>also have an important social context. Finally, the CEA underlines that since IORPs have a social context and must ensure an extremely important objective like pension provisions to members' and beneficiaries', protection measures for both insurers and IORPs should offer an adequate level of protection.</p> <ul style="list-style-type: none"> <input type="checkbox"/> There could be arrangements also for employers with an occupational pensions plan by an insurer where the employer is requested to provide additional funding in case of shortfall of its pension plan, such as for instance in the case of an underfunded Defined Benefit plan. <input type="checkbox"/> The CEA agrees that there are more IORPs than insurers. However, this should not lead to these entities being subject to less attention by the supervisors. In fact, letting up on the supervisory attention towards IORPs would clearly be disadvantageous to the members and beneficiaries. In terms of occupational pension plans, the amount of IORPs and insurers pensions' schemes will be more or less similar and the funding levels of both should be checked in a consistent manner. The proportionality principle should be taken into account in a similar way for both the insurance and the pension funds sectors. <p>Finally, the 5th quantitative impact assessment of Solvency II revealed that certain parts of the framework may not be entirely appropriate. In the outset of the CfA, the EC states that although the Solvency II Directive should serve as at benchmark for the review of the IORP Directive, the lessons learned from Solvency II also needs to be taken into account. The CEA agrees with the importance of drawing appropriate conclusions from the lessons learned and wishes to highlight that many of the challenges made apparent by e.g. QIS 5 are similar for insurance undertakings and IORPs. Amongst others, these challenges are related to the areas of long term guarantees, including occupational pension products. As a result, the CEA considers that the right approach consist in solving these problems, and introducing appropriate solutions, in both the IORP and the Solvency II Directives, rather than to try and solve issues in one Directive and leave the problems open in the other one.</p>	
44.	Charles	General	I should like to thank EIOPA for the opportunity to submit my comment as a	Noted

	CRONIN	comment	<p>contribution to the drafting of their response to the European Commission’s Call for Advice (CfA) on the review of Directive 2003/41/EC (The IORP Directive).</p> <p>The European Commission (EC) has shown a strong interest in using the Solvency II Directive, for the insurance sector, as the framework for the revision of the IORP Directive. While as there is some overlap between the insurance and occupational pensions businesses, in substance this is only at one end of the range of activities conducted by IORPs. The objective of the review of the insurance legislation was financial stability and policyholder protection. This was achieved through the application of capital requirements and risk management standards. The review of the occupational pensions business should focus on the parallel objective of protecting scheme members and beneficiaries, but also promoting the sustainability and development of these organisations. Hence the current IORP Directive is the best starting point for revision, rather than the Solvency II Directive. There are certainly areas from Solvency II where the text could comfortably fit into the revised IORP Directive, with the aim of promoting harmonisation, and reducing the opportunity for adverse regulatory arbitrage.</p> <p>There are a number of significant features that differentiate occupational pension schemes from insurance companies that support the above opinion. They are mostly not-for-profit organisations that perform a social function, they do not engage in leveraged finance and they have very long investment horizons. Hence the issues of excessive risk taking and leverage in pursuit of a short-term profit that characterised the financial institutions who contributed to the financial crisis are largely absent in occupational pension schemes. Therefore is it unnecessary, indeed it would be detrimental, to impose solvency capital requirements on these organisations for insolvency risks that they do not face. However there is one exception to this opinion and that is for schemes that guarantee benefits at their own risk.</p> <p>The EC has also expressed an interest in integrating the Key Investor Information Document (KIID) from the UCITS IV Directive into the revised IORP Directive (CfA 23). Given the growth in defined contribution schemes, I see merit in expanding the scope of the KIID as a pre-enrolment document where members are investing at their own risk. I would discourage framing the KIID</p>	<p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>
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		<p>around the whole scheme, but would focus it on the investment products that are offered within the scheme. This makes the document comparable with UCITS products and facilitates the integration of information for the benefit of the scheme member's whole portfolio.</p> <p>An aspect that deserves serious consideration is that the occupational pension scheme is the only structure where the interests of contributors and the managers of the scheme are aligned. There is generally no conflict over the pursuit of a profit by the scheme at the expense of its members and beneficiaries. The IORP, with its bulk purchasing power and access to investment expertise, probably provides society's most cost effective wealth management vehicle for people on low and middle incomes. In most cases it probably provides for the vast majority of their needs. Therefore regulation should be directed towards promoting these organisations and bolstering their contribution to society by making sure they conduct their business with a high level of professionalism. They should have robust risk management and governance systems. They should be resourced by suitably qualified people and they should be transparent. Lastly while we hold the IORP management to act in the best interests of the members and beneficiaries, because of their unique position in society, we should hold them accountable to a higher standard. I suggest that the new Directive introduces the requirement that they act with loyalty to scheme members and beneficiaries. This is not unlike the obligations placed on trustees under English Trust law, where a trustee has a fiduciary obligation to a person who is vulnerable and places reliance and good faith on the actions of that trustee to look after his/her best interests. I believe this is entirely consistent with the growing circumstances of Europe, where its citizens are increasingly being made responsible for their retirement provision, but totally lack the knowledge and skills to exercise that function.</p> <p>I strongly support the prudent man principle, but believe that its current description in Article 18(1)a of the IORP Directive could benefit from expansion. I believe that the preamble of the recently revised Regulation 28, of the South African Pension Funds Act 1956, would make a good replacement.</p> <p>In rounding off the investment rules section (CfA 7), I am concerned that many IORPs themselves are short of professional investment expertise. This can lead</p>	
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		<p>towards sub-optimal investing activities, such as short termism, which does not match the long-term investment horizon of the scheme. They can become captured by the principal-agent conflicts of their outsourced providers. This commonly manifests itself as herding behaviour, supported on the premise that if your investment knowledge is limited then it is prudent to follow the crowd. Naturally this is not in the best interests of scheme members and beneficiaries and could pose a systemic risk. Progress to resolving this problem would be through the requirement of having at least one senior person within the IORP, loyal to the IORP, who has the professional investment knowledge and experience to effectively challenge the advice of outsourced service providers (CfA 20).</p> <p>With regards to quantitative requirements (CfA 5 and 6), I cautiously support the introduction of a holistic balance sheet. To move it from being a concept to a functional reality it will require further development and a thorough impact assessment, to make sure that it is not detrimental to IORPs. As stated above, I see no need for solvency capital requirements, with the exception of self-guarantying IORPs. The burden of solvency capital will fall directly on the scheme participants without a corresponding benefit. Indeed solvency capital requirements could accelerate the closure of defined benefit schemes. One of the potential strengths of the holistic balance sheet, as a prudential instrument, is that it could be used to formalise smoothing mechanisms in the valuing of assets and liabilities, and thus promote counter-cyclical behaviour in a significant area of the financial markets.</p> <p>Finally I should like to thank EIOPA for the opportunity to serve on the Occupational Pensions Stakeholder Group, which I have found a rewarding and stimulating experience. Please feel free to get in touch if you seek any further clarification to my response. I can be reached via email at charles@cronin.cc or by telephone on +44 (0)20 7323 5311</p> <p>Yours sincerely,</p> <p><input type="checkbox"/></p> <p>Charles Cronin, CFA</p>	
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45.	Chris Barnard	General comment	<p>Please note that the comments expressed herein are solely my personal views.</p> <p>Thank you for giving us the opportunity to comment on your Response to Call for Advice on the Review of Directive 2003/41/EC: second consultation.</p> <p>Please note that I have also provided comments on the previous consultation covering scope, cross-border activity, prudential regulation and governance.</p> <p>Many of the proposals appear to be reasonable on their own. In total however, the proposals appear to be onerous, and may increase the cost burden significantly across IORPs. Therefore I would recommend that the additional requirements and cost burden should be considered both for each proposal in isolation, and for all of the proposals in total.</p>	Noted
46.	CMHF (Centrale van Middelbare en Hogere Functionar	General comment	<p>Comments by the CMHF on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>These General comments by the Centrale van Middelbare en Hogere Functionarissen [CMHF] on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the CMHF refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie], see answers 1 to 91 for these technical details of the Pensioenfederatie. In the present response, CMHF will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <p>1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced –</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

			<p>including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission’s principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework.</p> <p>2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended.</p> <p>3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States.</p> <p>4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent ‘benefit adjustment mechanism’ for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p>	
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			<p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age</p>	
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			<p>will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p> <p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>The CMHF notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p>	
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		<p>solidarity-based pension system.</p> <p>The CMHF also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, the CMHF wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p>	
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		<p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations.</p>	
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			<p>This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. 	
47.	CNV (Dutch Cristian Union)	General comment	Comments by the Labour Foundation on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')	<p>Noted</p> <p>The point about the interaction with first</p>

			<p>Preamble</p> <p>These comments by the CNV on EIOPA’s Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, CNV refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie]. In the present response CNV will provide more general comments on EIOPA’s Consultation Paper. The main conclusions are:</p> <ol style="list-style-type: none"> 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission’s principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework. 2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended. 3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be 	<p>pillar pensions has been recorded in the introductory chapter</p>
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		<p>clear beforehand what effects they will have on the pension systems in the Member States.</p> <p>4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent 'benefit adjustment mechanism' for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p> <p>5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the pension benefits in the Netherlands.</p> <p>6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p>	
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			<p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p> <p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people’s pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011</p>	
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			<p>between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p>	
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		<p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>CNV notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p> <p>CNV is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower</p>	
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		<p>supplementary pension results.</p> <p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p> <p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.</p> <p>CNV also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, CNV wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p>	
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			<p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p> <p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national</p>	
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		<p>pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of 	
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			<p>workers in the area of pension provisions;</p> <ul style="list-style-type: none"> <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. <p>CNV will forward a copy of these comments to the EC.</p>	
48.	CONFEDERATION OF BRITISH INDUSTRY (CBI)	General comment	<p>Higher solvency requirements are unnecessary and will slow down the recovery and destabilise capital markets</p> <p>The CBI welcomes this opportunity to respond to EIOPA's final consultation on the Call for Advice (CfA) on the review of the Directive 2003/41/EC. The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.</p> <p>While whether or not a Solvency II-style regime should apply to IORPs is not part of the scope of this consultation, CBI members feel it is important to stress our serious concerns, and strong opposition, to this review altogether,</p>	<p>Noted</p> <p>The point about the greater length of pension fund liabilities has been recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

		<p>particularly in the context of the ongoing economic crisis in Europe and the grave events happening in the Eurozone. While much of the technical detail, even in this consultation document, remains unclear, the imposition of a Solvency II-type regime for pensions, in any shape or form, CBI members believe to be unnecessary and would have disastrous economic implications for the EU and the global economy.</p> <p>The CBI fully supports EIOPA's call for a detailed and rigorous economic impact assessment to be carried out before the Commission makes its final decision on whether to go ahead with plans to review the 2003 Directive.</p> <p>Applying a Solvency II-type regime to UK DB schemes, for example, would increase existing technical provision levels by up to 85%-90%. This represents up to an additional €500bn (over 15% of the market capitalisation of FTSE350 companies)□. DB schemes by the nature of their activity have very long-term liabilities and matching investment strategies. This means that, unlike other financial services products, the financial stability is not affected by short-term economic turbulence and therefore this type of capital buffers are unnecessary. Instead, at a time when sources of credit remain scarce and companies' cashflow have not yet recovered from the financial crisis, forcing companies to divert money away from business investment could do serious damage to the pace of economic recovery in Europe.</p> <p>Moreover, increasing funding requirements for pensions would have a serious impact on investment flows in financial markets. Currently, European pension funds hold total assets worth €2,500bn. If they were to comply with Solvency II requirements they would have to hold extra assets worth €1,000bn this would mean they would have to sell equities at about the same value. This would further starve the European private sector of sources of financing, preventing them from growing their business and creating jobs. In the specific case of the UK, pension funds own around 20% of assets in the UK equity market and 25%</p>	
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			of assets are in overseas equities, including the EU. Therefore, the cost of the sale of these assets would destabilise both the EU and international financial markets at a time when the stability of the economy and markets remains extremely fragile.	
49.	De Unie (Vakorganisatie voor werk, inkomen en loop	General comment	<p>Comments by De Unie on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>These General comments by De Unie on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, De Unie refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie], see answers 1 to 91 for these technical details of the Pensioenfederatie. In the present response, DE UNIE will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <p>1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework.</p> <p>2. There is no need for a thorough revision of the IORP Directive, certainly</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>given that EIOPA itself advises that the scope of that directive should not be extended.</p> <p>3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States.</p> <p>4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent 'benefit adjustment mechanism' for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p> <p>5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the</p>	
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		<p>pension benefits in the Netherlands.</p> <p>6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p> <p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p> <p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people's pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial</p>	
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			<p>market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p>	
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			<p>second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results.</p> <p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p> <p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.</p> <p>De Unie also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p>	
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		<p>Finally, De Unie wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p> <p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process</p>	
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		<p>and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <p><input type="checkbox"/> promoting the sustainability of the public finances of the EU Member</p>	
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			<p>States;</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. 	
50.	Derek Scott of D&L Scott	General comment	<p>The extension of the deadline (compared to the first consultation) for responding to EIOPA's second consultation is to be welcomed, but fair and adequate consideration of the consultation's main issues still demands far, far longer than the timescales which have been allowed so far (both consultation periods ending 15 August 2011 and 2 January 2012 include significant holiday periods for many interested parties, including members of occupational pension schemes and their representatives, i.e. member nominated trustees and trades unions).</p> <p>It is unacceptable that public pension plans, including PAYG basis arrangements, are subject to far less regulation and accountability than other occupational pension plans. We have seen pension strikes in the UK partly because government here is unwilling or unable to provide up to date actuarial information and also to explain how contributions to contributory arrangements</p>	Noted

		<p>are being used within government finances.</p> <p>It is also difficult to retain sight of the founding principles of the EU's Pensions Directive (IORP) when confronted with the 517-page response of the European Insurance and Occupational Pensions Authority (EIOPA) to the European Commission's call for advice last April on its review of the legislation.</p> <p>My own understanding of the background to the current Directive is this:</p> <p>A pan-European pension goal was already alive in the 1990s, and the IORP Directive accepted the European Federation for Retirement Provision's 2000 proposal for a European IORP that would pool assets in a single vehicle while beneficiaries' entitlements remained subject to national social and labour laws.</p> <p>Multinationals were presumed to be the target audience, that the likes of Unilever and Shell would eagerly embrace the concept. In fact, today, there are currently only just 84 cross-border pension funds, many of which are active in the UK and Ireland – the two EU member states also with arguably the most in common, in terms of pensions legislation.</p> <p>Beyond that, the complexities start: in the IORP Directive's current version, a cross-border entity is subject to a funding standard that references Solvency I – the Directive will therefore be obsolete by the enactment of Solvency II.</p> <p>Now the original aim of the IORP Directive has been equalled by the Commission's apparent desire to maintain consistency in financial services legislation to avoid regulatory arbitrage. The idea is that all EU member states should enact an economic risk-based approach to pension supervision.</p> <p>This is surely inadvisable for several reasons.</p> <p>First, an "economic risk-based approach" seems to be bureaucratic code for one based on Solvency II to a greater or lesser extent. Solvency II itself is based on Basel risk-capital requirements for banks. The flaw is that these require notions of 97.5% or 99% certainty of capital ratios – themselves based on backward-looking investment return assumptions. In practice, these promote herd behaviour and almost certainly discourage prudent long-term investment behaviour.</p>	
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		<p>Second, the Commission accepts the inherent differences between insurance companies and pension funds with a company as sponsor, so surely it must accept the need for a 'different systems, different standards' approach.</p> <p>EU member states are also moving away from traditional defined benefit systems toward more flexible, hybrid, risk-sharing approaches. Given the long-term nature of the liabilities of what are in many cases now simply legacy DB arrangements, and noting the economic cost of moving to immediate full funding, member states like the UK and Ireland are surely going to have to continue with very long recovery periods anyway.</p> <p>The revised IORP Directive should focus on promoting cross-border activity and harmonising defined contribution pensions – particularly since the latter are likely to provide the main source of growth for the former. This would seem to align a revised Directive with some of the main principles that informed the first.</p> <p>The Chairman of EIOPA has signalled his intention to change the way in which consumers – including pension scheme members – are protected. Speaking at a Consumer Strategy Day in Frankfurt, the Chairman is reported as saying: “We need to question the strategy tools and policy tools that we traditionally use to address information asymmetries, conflicts of interest and market inefficiencies, to protect the rights of policyholders, pension scheme members and other beneficiaries.”</p> <p>I agree, but I genuinely fear that some of the changes you may think are going to help, will have the opposite effect. Greater disclosure to address information asymmetries is costly, and the costs are ultimately borne by consumers not intermediaries. Conflicts of interest can be managed better, but more attention should be given to alignment of interests (i.e. fund managers made to co-invest and generally take their rewards only when their returns are beneficial to policyholders and other beneficiaries relative to maintaining purchasing power). Market inefficiencies can be exploited by re-designing investment mandates away from index-relative strategies which simply mimic market movements, and instead to mandates demanding absolute returns relative to purchasing power which focus on fundamentals, buy-, hold- and sell-disciplines based on</p>	
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		<p>relative valuations and with the income component of total returns restored to its original pre-eminence.</p> <p>Over the last two decades, there has been a significant change in the conventional methodology employed in actuarial valuations. In particular, two related changes can be noted:</p> <ol style="list-style-type: none"> 1) The switch from an assessed value of assets (typically using discounted cash flows) to the marked-to-market value; and 2) The use of market interest rates (typically, bond yields) for the assessed value of liabilities. <p>Underlying this change in actuarial (and regulatory and accounting) methodology has been the general acceptance — implicit or otherwise — by the actuarial profession of the so-called Efficient Markets Hypothesis (“EMH”). This came at a time when the EMH, initially formulated in the 1960s, had come under such intense scrutiny by economists and other critics that its status even as an acceptable working hypothesis could no longer be generally accepted. Of course, this was hardly surprising given the TMT Bubble of 2000-2003 and the later Sub-Prime Crisis of 2007-2008.</p> <p>Reference to the part played by EMH thinking is appropriate, indeed essential, because better investment strategy (questioning the “traditional tools”) should instead be based on convictions that:</p> <ol style="list-style-type: none"> a) Firstly, asset markets are inefficient; and b) Secondly, these market inefficiencies can be exploited consistently under common sensible investment mandates. 	
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			<p>Traditional portfolio management mandates — whether peer group-based, index-based or absolute-return — all suffer from one basic flaw: namely, that there is nothing in the mandates that induces an appointed portfolio manager to take those decisions enabling him/her to achieve his/her agreed investment performance objective in the best interests of policyholders and other intended beneficiaries.</p> <p>Investment strategies can be designed to exploit market inefficiencies over the longer term by focussing on:</p> <ul style="list-style-type: none"> i) The more permanent, rather than the transitory, sources of return; and ii) Improvement in the earning capacity of an investment portfolio through continual recycling of capital through reinvestment discipline. <p>In the simplest case, the return on any asset can and should be decomposed into:</p> <ul style="list-style-type: none"> Interest or Dividend (Income) Yield; Income Growth (if any); and Market Re-Rating (Capital Gains or Losses). <p>By contrast with Market Re-Rating which is transitory in nature, Income Yield and Income Growth are much more permanent phenomena and far more reliable in the sense that they can be the subject of proper investment research</p>	
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			and analysis undertaken by an investment manager and, hence, to a greater or lesser extent, under the control of a properly aligned and incentivised portfolio manager.	
51.	Deutsche Post AG / Deutsche Post DHL	General comment	<p>1. Deutsche Post DHL employs approximately 300,000 EU citizens and is a sponsoring company for institutions for occupational retirement provision (IORPs) for active and former employees in many Member States of the EU. Based on occupational pension commitments made by Deutsche Post DHL in EU countries, over EUR 650 million in payments were, for instance, be made to former employees in the EU in 2011.</p> <p>2. We would like to state that we regret that the time for consultation was very short. Even with the postponement of the deadline to the beginning of January, we feel that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice already mid-February.</p> <p>3. Please find below some general remarks:</p> <p>4. 1) IORPs should be regulated by a regime designed for pensions but not for insurances. Insurance companies act commercially, whereas IORPs provide social benefits to active and former employees of a company as a consequence of their employment. Applying an insurance-style solvency regime to IORPs is wrong in principle.</p> <p>5. 2) We are very concerned that it appears to be EIOPA's intention to provide advice to the Commission without any qualitative and/or quantitative impact study. Such a study should analyse the impact on the IORPs (significant increase of costs), the future and design of pension schemes (less generous, no more DB) and on the wider economy (as a result of the necessary change in the schemes' asset allocation).</p> <p>6. 3) The lack of cross border activity – as being complained by the</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

			<p>Commission - is partly due to a lack of demand and partly due to differences in local labour law and taxation but not due to a lack of harmonized supervision.</p> <p>7. 4) Looking at the scope and the impact of that review, we note that the countries that will be most affected by the review are countries with large funded corporate pension schemes with defined benefit characteristics. The countries where those schemes form a large part of retirement provision do in our opinion already have a sufficient and well established national safety net. However those countries would be faced to maximum harmonization pressure, whereas countries with no or a limited occupational pillar and/or safety net would face a significantly reduced harmonization pressure.</p> <p>5) Applying a solvency regime would lead to massive increase in costs for sponsors. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs. This is intergenerational unfair.</p> <p>Given the limited time and resources at our disposal to respond to this consultation we have decided to answer at least part of the 96 (!) questions. This does not mean however, that we agree to the other questions or that we agree to the basic premise of this consultation, i.e. that a regulatory regime based on Solvency II should be imposed on IORPs. We explicitly do not agree to that premise. The Solvency II framework is not the right framework for IORPs!</p>	
52.	Deutsche Post Pensionsfonds AG	General comment	<p>Deutsche Post Pensionsfonds AG is a corporate pension fund providing pensions to approx. 16.000 former employees of Deutsche Post AG. Total assets under management amount to approx. €570m. Over €40m of payments were, for instance, be made in 2011 to beneficiaries.</p> <p>1. We would like to state that we regret that the time for consultation was very short. Even with the postponement of the deadline to the beginning of January, we feel that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice already mid-February.</p> <p>2. Please find below some general remarks:</p>	Noted

		<p>3. 1) IORPs should be regulated by a regime designed for pensions but not for insurances. Insurance companies act commercially, whereas IORPs provide social benefits to active and former employees of a company as a consequence of their employment. Applying an insurance-style solvency regime to IORPs is wrong in principle.</p> <p>4. 2) We are very concerned that it appears to be EIOPA's intention to provide advice to the Commission without any qualitative and/or quantitative impact study. Such a study should analyse the impact on the IORPs (significant increase of costs), the future and design of pension schemes (less generous, no more DB) and on the wider economy (as a result of the necessary change in the schemes' asset allocation).</p> <p>5. 3) The lack of cross border activity – as being complained by the Commission - is partly due to a lack of demand and partly due to differences in local labour law and taxation but certainly not due to a lack of harmonized supervision.</p> <p>6. 4) Looking at the scope and the impact of that review, we note that the countries that will be most affected by the review are countries with large funded corporate pension schemes with defined benefit characteristics. The countries where those schemes form a large part of retirement provision do in our opinion already have a sufficient and well established national safety net. However those countries would be faced to maximum harmonization pressure, whereas countries with no or a limited occupational pillar and/or safety net would face a significantly reduced harmonization pressure.</p> <p>7. 5) Applying a solvency regime would lead to massive increase in costs for sponsors. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs. This is intergenerational unfair.</p> <p>8. Given the limited time and resources at our disposal to respond to this consultation we have decided to answer at least part of the 96 (!) questions. This does not mean however, that we agree to the other questions or that we agree to the basic premise of this consultation, i.e. that a regulatory regime</p>	
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			based on Solvency II should be imposed on IORPS. We explicitly do not agree to that premise. The Solvency II framework is not the right framework for IORPs!	
53.	DHL Services Limited	General comment	<p>Introduction</p> <p>DHL Services Limited is the main employing company of the Deuthepost DHL Group in the United Kingdom. We have over 60,000 employees, and 50,000 pensioners and deferred pensioners. All employees are eligible for membership of our own IORP. The assets of our IORP are around €4 billion.</p> <p>We believe that the current consultation is misguided, this is because EIOPA was asked to provide advice on how a solvency regime for pensions might be adopted starting from the Solvency II, rather than being asked to consider whether such a solvency regime is appropriate in the first place.</p> <p>It is our view that applying a insurance based solvency regime to IORPs is wrong in principle. Insurance products are taken out voluntarily by individuals, trustees or companies. IORPs are in the majority of members states, the UK included, used to provide benefits to employees as part of their remuneration package. Employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products, IORPs on the other hand provide an social benefit to individuals as a consequence of their employment. The case for applying insurance regulation to pensions has not been successfully made. We do recognise that there are a number of member states where IORPs do directly compete with insurance products, and these are in the main countries where IORPs are less developed. We therefore believe that EIOPA should determine those circumstances where IORPS operate commercially and should be subject to similar insurance solvency requirements, rather than applying unnecessary regulation to all IORPs.</p> <p>We believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, but the cost of such security would be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors</p>	<p>Noted</p> <p>The point about the need for change to be demonstrated has been recorded in the introductory chapter</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

			<p>responding to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs.</p> <p>We are concerned also that EIOPA intends to provide advice to the Commission in advance of a quantitative impact assessment. We do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment. Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs. We believe that this exercise must be carried out before the European Commission publishes a revised draft of the IORP directive so that their review of the directive can be informed by that evidence.</p> <p>Applying a regime based around a risk-free discount rate and solvency capital requirement would lead to a change in pension schemes' asset allocation. Instead of investing in a wide range of assets including equities, corporate debt, derivatives and gilts, schemes would be likely to switch to 'risk-free' investment in gilts. This could lead to a substantial disincentive for long-term investment in corporate debt and equity, which could have permanent impacts on the willingness of pension schemes to invest in the wider corporate economy. The current European market turmoil also suggests that now is not the time for Europe to be considering any major changes which could destabilise investment markets through changes to asset allocation by pension schemes. The current crisis has also challenged the very notion of 'risk-free' investment and it will be necessary to form a revised understanding of what risk-free means in practice before such concepts can be applied to pension schemes.</p> <p>For these reasons, we believe that the review of the IORP directive (and in particular the funding and security proposals contained in EIOPA's draft response) should be deferred a number of years.</p>	
54.	DHL Trustees	General	Introduction	Noted

Limited	comment	<p>DHL Trustees Limited is the trustee of the pension scheme (IORP) of the DeutchePost DHL Group in the United Kingdom. The IORP has over 100,000 members and assets of around £4bn. All employees are eligible for membership of the IORP.</p> <p>We believe that the current consultation is misguided, this is because EIOPA was asked to provide advice on how a solvency regime for pensions might be adopted starting from the Solvency II, rather than being asked to consider whether such a solvency regime is appropriate in the first place.</p> <p>It is our view that applying a insurance based solvency regime to IORPs is wrong in principle. Insurance products are taken out voluntarily by individuals, trustees or companies. IORPs are in the majority of members states, the UK included, used to provide benefits to employees as part of their remuneration package. Employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products, IORPs on the other hand provide a social benefit to individuals as a consequence of their employment. The case for applying insurance regulation to pensions has not been successfully made. We do recognise that there are a number of member states where IORPs do directly compete with insurance products, and these are in the main countries where IORPs are less developed. We therefore believe that EIOPA should determine those circumstances where IORPS operate commercially and should be subject to similar insurance solvency requirements, rather than applying unnecessary regulation to all IORPs.</p> <p>We believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, but the cost of such security would be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors responding to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes,</p>	<p>The point about the need for change to be demonstrated has been recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>
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			<p>under which members bear all the risks. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs.</p> <p>We are concerned also that EIOPA intends to provide advice to the Commission in advance of a quantitative impact assessment. We do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment. Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs. We believe that this exercise must be carried out before the European Commission publishes a revised draft of the IORP directive so that their review of the directive can be informed by that evidence.</p> <p>Applying a regime based around a risk-free discount rate and solvency capital requirement would lead to a change in pension schemes' asset allocation. Instead of investing in a wide range of assets including equities, corporate debt, derivatives and gilts, schemes would be likely to switch to 'risk-free' investment in gilts. This could lead to a substantial disincentive for long-term investment in corporate debt and equity, which could have permanent impacts on the willingness of pension schemes to invest in the wider corporate economy. The current European market turmoil also suggests that now is not the time for Europe to be considering any major changes which could destabilise investment markets through changes to asset allocation by pension schemes. The current crisis has also challenged the very notion of 'risk-free' investment and it will be necessary to form a revised understanding of what risk-free means in practice before such concepts can be applied to pension schemes.</p> <p>For these reasons, we believe that the review of the IORP directive (and in particular the funding and security proposals contained in EIOPA's draft response) should be deferred a number of years.</p>	
55.	DIIR – Deutsches Institut fuer Interne	General comment	DIIR – Deutsches Institut fuer Interne Revision e. V., located in Frankfurt am Main, Germany would like to thank EIOPA for the opportunity to comment on the Call for Advice on the review of Directive 2003/41/EC, second consultation.	Noted

	Revision e.		<p>DIIR is the national association of German Internal Auditors. It represents approximately 2.500 members, including more than 600 corporate members. Amongst the corporate members DIIR is for example currently representing 29 out of 30 DAX-30. Additionally we have numerous large groups and at the same time medium and small enterprises from all different industries as well as public sector entities within our membership base.</p> <p>As such, DIIR is an associated organization of the global Institute of Internal Auditors (the IIA), a professional organization of more than 170,000 members in some 165 countries. Throughout the world, the global IIA is recognized as the Internal Audit profession's leader in certification, education and research regarding Internal Audit. The global IIA also maintains the International Professional Practices Framework (IPPF) which includes the International Standards for the Professional Practice of Internal Auditing (available in 29 languages), the Definition of Internal Audit, the Code of Ethics, Practice Advisories and other guidance (http://www.theiia.org/guidance/standards-and-guidance/interactive-ippf/).</p>	
56.	Direction Générale du Trésor, Ministère des financ	General comment	<p>As long as it is relevant, we think logical to push forward a revision of the IORP directive with a Solvency 2 focus. The protection of beneficiaries is at stake. The issue of the level playing field with the insurance undertakings offering similar products should also be at the center of the reflection since one of the declared objectives of the revision of the directive is to enhance the cross-border activity. If this converging process does not occur, the question of the treatment of the retirement activity of the insurance undertakings will inevitably raise.</p>	<p>Noted</p> <p>Position on level playing field has been recorded in the introductory chapter.</p>
57.	Dutch Labour Foundation (Stichting van de Arbeid)	General comment	<p>Comments by the Labour Foundation on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>These comments by the Dutch Labour Foundation [Stichting van de Arbeid] (the consultation body of the Dutch social partners at national level) on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the Labour Foundation refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie]. In the present response, the Labour Foundation will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <ol style="list-style-type: none"> 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework. 2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended. 3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States. 	
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			<p>4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent 'benefit adjustment mechanism' for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p> <p>5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the pension benefits in the Netherlands.</p> <p>6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p>	
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			<p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p> <p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people’s pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p>	
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			<p>contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>The Labour Foundation notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p> <p>The Labour Foundation is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results.</p>	
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		<p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p> <p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.</p> <p>The Labour Foundation also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, the Labour Foundation wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States'</p>	
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			<p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border 	
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			<p>activities of pension institutions;</p> <p><input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects.</p> <p>The Labour Foundation will forward a copy of these comments to the EC.</p>	
58.	Dutch Ministry of Social Affairs and Employment	General comment	<p>Reaction of the Dutch Ministry of Social Affairs and Employment to the second consultation of EIOPA (Draft advice on IORP revision)</p> <p>Introduction</p> <p>We welcome the opportunity to react to the draft advice by EIOPA on the review of the IORP Directive. EIOPA has done a lot of work in the short period it was given to prepare a response to the Commission's Call for Advice. However, we have fundamental concerns about this draft advice. Though these concerns should and will be discussed at Member States level, we think it will be useful to raise them already at this stage.</p> <p>The Netherlands endorses an integrated approach of economic, social and financial market policy to pensions in the EU. We share the points of interest on pensions made by the Commission in the Annual Growth Survey 2012 and</p>	<p>Noted</p> <p>The factors of tax (as part of fiscal policy), differences in social and labour law, and lack of demand as reasons for lack of cross-border activity are recorded in the introductory chapter.</p>

		<p>especially the remark that Member States should give particular attention to pursue “the reform and modernisation of pension systems, respecting national traditions of social dialogue to ensure the financial sustainability and adequacy of pensions, by aligning the retirement age with increasing life expectancy, restricting access to early retirement schemes, supporting longer working lives, equalising the pensionable age between men and women and supporting the development of complementary private savings to enhance retirement incomes.”</p> <p>In our view, there is no single ideal pension system and there are no single ideal solutions. Therefore, within the objectives agreed upon on EU level, the Member State should remain responsible for its pension provision and should keep the opportunity to realise the reforms in its pension system which suits that Member State best. We are afraid that a harmonized supervisory framework, as proposed by EIOPA, is not consistent with this principle. Our concerns are threefold:</p> <ul style="list-style-type: none"> <input type="checkbox"/> First, we believe that the case for a harmonized framework is weak. It is not clear which problems are solved by a harmonized supervisory framework with a limited scope. <input type="checkbox"/> Second, a harmonized confidence level may have large unintended consequences. <input type="checkbox"/> Third, EIOPA leaves many relevant aspects open. As a result, it is impossible to envisage all consequences of such a framework for our pension system. <p>Below we will elaborate on these concerns.</p> <p>Barriers to cross border activities The present limited number of cross border activities of IORPs is an important incentive to create this harmonized supervisory framework. In our view the limited number of cross border activities of IORPs mainly derives from differences in fiscal policy, differences in Social and Labour Law and differences</p>	
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		<p>in social security (i.e. first pillar pensions) in the Member States. And last but not least, the present limited number of cross border activities may be the result of a lack of demand. Therefore, we believe that EIOPA should investigate to what extent differences in supervisory rules seriously hinder cross border activities by IORPs.</p> <p>Limited scope</p> <p>EIOPA advises to leave the limited scope of the IORP Directive unchanged. This raises questions on proportionality, as at the moment the Directive mainly covers The Netherlands and the UK (85% of the IORP capital is located in these two countries). The IORPs in these countries already have risk-mitigating security mechanisms at their disposal. Therefore introducing additional EU measures will have no added value for these IORPs. And because of the limited scope other countries will also not benefit from it.</p> <p>In our view, EIOPA should clarify why it refrains from a “holistic scope”.</p> <p>Same risks same rules</p> <p>We agree that the “same risks, same rules, same capital” principle should be leading. However, pension products offered by Dutch IORPs differ from the pension products offered by insurance companies. The pension contracts of Dutch IORPs contain ex-post adjustment mechanisms, which are not conceivable in insurance contracts. Hence, it is appropriate to apply different rules.</p> <p>A single EU confidence level</p> <p>Against this perspective, the holistic balance sheet introduced in EIOPA’s draft advice offers interesting theoretical possibilities for a harmonized prudential framework. We appreciate that it recognizes differences between the pension systems in the EU Member States. We also welcome the attempt to deal with these different pension schemes and we agree with the distinction made between pension contracts offered by IORPs and offered by insurers, for</p>	
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		<p>example by noticing the existence of adjustment mechanisms of IORPs.</p> <p>But the complexities of this holistic balance sheet do not give confidence to what extent it could serve as a primary EU supervision tool. For example the draft advice by EIOPA seems to be based on the assumption that safe pensions logically lead to adequate and sustainable pensions. However, a high level of safety also requires a less risky investment policy and/or high buffers. As a result, a high level of safety will also lead to higher pension costs changing the balance between adequacy and affordability. Trying to realise an EU wide confidence level would result for some Member States in very expensive or in lower pensions.</p> <p>EIOPA has put much effort in the design of the holistic balance sheet, while it simultaneously has indicated not being able to make a decision on both the level as well as the need for a single confidence level. We feel EIOPA should make clear how the holistic balance sheet could or should be used in these circumstances.</p> <p>Furthermore, EIOPA should explain what the option to introduce one prudential confidence level would mean for supervision if, besides the prudential level, also a Social and Labour Law level of confidence is introduced (as sketched in for example 10.3.37 and 10.3.73). Especially clarification is needed on the relation between supervision on the official entitlements (defined by Social and Labour Law) and the artificial entitlements created for the purpose of prudential supervision. In this context, EIOPA should also clarify why and how the mathematical approach as suggested in paragraph 9.3.116 could work from a prudential supervision point of view. This paragraph suggests that a 99,5% confidence level can always be assumed as long as one calculates over a lower amount of pension entitlements. However, as the entitlements will only consist on paper and not in a legal sense, its relevance is difficult to imagine from a supervision point of view.</p>	
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			<p>Unconditional, conditional and discretionary</p> <p>Another aspect of the holistic balance sheet that EIOPA should clarify is the differentiation between unconditional, conditional and discretionary pension benefits. This is an interesting distinction, but it is not clear to us how the allocation of the benefits will be made (what definitions will be used). The impact of the holistic balance sheet will largely depend on this allocation. As will be made clear in the next paragraphs, this differentiation might have tremendous consequences.</p> <p>Other issues of the holistic balance</p> <p>We would like EIOPA to better illustrate how the possibility to reduce pension entitlements through the so-called ex-post benefit adjustment mechanisms, will impact the holistic balance sheet through balance sheet adjustments. And EIOPA should clarify why a pension fund without external shareholders and in which all risks are shared by its participants, nevertheless requires operational capital.</p> <p>Level 2 decisions</p> <p>In the draft advice EIOPA sometimes refers to decisions on level 2. At this stage The Netherlands does not support any reference to decisions about the technical aspects on level 2 in the EIOPA advice. Small changes in technical aspects can have a huge impact on national pension systems. The Call for Advice does not ask at which level decisions have to be taken. Suggestions of EIOPA that something has to be decided at level 2 imply that it cannot be decided at level 1. However, as level 1 discussions have not taken place yet it appears strange that EIOPA already advises that decisions should be made at level 2.</p> <p>Impact assessment</p>	
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			<p>We look forward to a good impact assessment of the different options in the advice and of the other aspects mentioned above, not only on security but also on the adequacy and sustainability of pensions. This is necessary to be able to make a good assessment of the impact of the different options given in the EIOPA advice and also of the intentions put down by the Commission. We assume that our Dutch pensions will be involved in the impact assessment.</p> <p>Dutch Pension system and the IORP review</p> <p>The second pillar of the Dutch pension system (supplementary pensions) consists of collective, solidarity and intergenerational risk sharing elements agreed upon by social partners. Pension benefits in the second pillar are not guaranteed, as the “financial assessment framework” in the Dutch Pension Act is not aimed to “guarantee” pension benefits but is aimed to prevent that burdens will be laid on future generations without constraints. So the prudential regulations in The Netherlands are instrumental to realise social and labour objectives. The outcome of the first and the second pillar of the Dutch pension system together is that pensioners generally receive an adequate pension income.</p> <p>To maintain this pension system, social partners and government recently reached agreement on pension reforms (after lengthy negotiations). These reforms are in line with the recommendations in de Country Specific Recommendations (measures to increase the statutory retirement age by linking it to life expectancy, and underpin these measures with others to raise the effective retirement age and to improve the long-term sustainability of public finances) and correspond with the suggestions to pension reforms given by the Commission in the Annual Growth Survey 2012 mentioned above.</p> <p>We feel that the proposed revision of the IORP Directive will be a huge threat to this Dutch pension reform especially if it results in raising the price of pensions or in limiting the variety of pension products that can be offered to participants.</p>	
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		<p>Trade-off of risk and reward on existing contracts</p> <p>The Call for Advice suggests that the starting point of the revision on Defined Benefit systems is to set up a harmonised solvency regime based on Solvency II. This means stricter solvency rules for Dutch IORPs, which will result in a fundamental shift in the trade-off between risk and reward. We want to stress that in The Netherlands we accept a higher risk than a 99,5% confidence level suggests. As the trade-off between risk and reward is different and is not the same as generally assumed with insurance companies, both our current and new (after pension reform) contracts do not give hard guaranteed pension benefits. The members ultimately bear the risks, although the contracts do have solidarity and collective elements.</p> <p>This means in our view that in the examples of the holistic balance, both the current and new Dutch pension contracts could best fit in the example of the holistic balance sheet in paragraph 8.3.58. Consequently, EIOPA should make sure that pension contracts which give no hard economic guarantees and in which members bear the risks as an ex-post benefit adjustment mechanism legally allows for a benefit reduction, should fit in the balance sheet illustrated in paragraph 8.3.58, without taking away the hesitations expressed earlier.</p> <p>Impact of higher confidence level for existing contracts in The Netherlands</p> <p>Otherwise it means a harmonized higher confidence level will be put in place. If existing Dutch pension contracts will have to comply with a value at risk measure with a 99,5% confidence level, these funds will have to increase their buffers with about 11% of their liabilities in exchange for an additional degree of safety that has not been called for. If this degree of safety is forced upon us, this will mean that to reach the required buffers in say five years, pension funds will have to cut the nominal pension rights of their participants by about 9%. This cut will be on top of a five year transition period with no indexation. After the transition period the pensions and pension rights will also be structurally reduced by 11% (or the cost covering premiums have to increase by 11%, which is unlikely with the current high level of pension premiums). This high</p>	
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			<p>increase in costs will make the current pensions prohibitive for participants, and will thus have a negative impact on the adequacy of the Dutch pension income.</p> <p>Concluding</p> <p>With this letter we have raised our general and more specific concerns regarding the revision of the IORP Directive. When there is a need for further explanations, we are always willing to give them.</p>	
59.	Ecie vie	General comment		
60.	ECIIA	General comment	<p>The ECIIA (The European Confederation of Institutes of Internal Auditing) would like to thank EIOPA for the opportunity to comment on the Call for Advice on the review of Directive 2003/41/EC, second consultation.</p> <p>The ECIIA is a confederation of national associations of internal auditing located in 35 countries, including all those of the EU, representing 35,000 internal audit professionals. As such, the ECIIA is an Associated organization of the global Institute of Internal Auditors (the IIA), a professional organization of more than 170,000 members in some 165 countries. Throughout the world, the Global IIA is recognized as the internal audit profession's leader in certification, education and research regarding internal auditing. The Global IIA also maintains the International Professional Practices Framework (IPPF)= which includes the International Standards for the Professional Practice of Internal Auditing (available in 29 languages), the Definition of Internal Auditing, the Code of Ethics, practice advisories and other guidance (http://www.theiia.org/guidance/standards-and-guidance/interactive-ippf/).</p>	Noted
61.	EFI (European Federation of Investors)	General comment	<p>The European Federation of Investors (EuroInvestors) welcomes the opportunity to comment on the Response to Call for Advice on the review of Directive 2003/41/EC and thanks EIOPA for launching this consultation.</p> <p>The European Federation of Investors and other financial services users</p>	Noted

		<p>("EuroInvestors") was created in 2009, following the financial crisis which demonstrated the limits of the almost exclusive dialogue between regulators and the financial industry, largely ignoring the user side. EuroInvestors is the dedicated European representative of the interests of the financial services users in order to promote training, research and information on investments, savings, life insurance, pensions, borrowings and Personal Finances of individuals in Europe, by grouping the organisations pursuing the same objectives at a national or international level.</p> <p>Already about 50 national organizations of investors and other financial services users have joined us, which – in turn – count more than four million European citizens as members.</p> <p>EuroInvestors has experts participating to the EC Financial Services User Group, to the Securities & Markets, the Banking and the Pensions Stakeholder Groups of the European Supervisory Authorities. Its national members also participate to national financial regulators and supervisors bodies when allowed.</p> <p>.</p> <p>For further details please see our website: www.euroinvestors.org.</p> <p>Before answering to the consultation questions, EuroInvestors would like to point out the following:</p> <p>due to the short period of time left to the consultation and the very large number of technical questions that are raised it was very difficult for a consumer organization like FAIDER with a very limited amount of resources to respond in detail. Therefore we focused on general principles that we consider should apply in the drafting of the legislation relating to IORP. We will be happy to make more precise proposals on different aspects which directly concern consumers later in the process.</p>	
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			<p>We fully support the following statement from the GCAE :</p> <p>“We agree with EIOPA that information about pensions should be correct, understandable and not misleading. Communications to the members should also explain in simple and clear terms the principal risks implicit in the financial arrangements, how they are managed and the potential consequences of failure.</p> <p>Better communication about the purchasing power of the benefits is essential and should, we think, be an important factor in disclosure.</p> <p>Transparency should lead to better communication with all stakeholders, not only with members, but also with employers, supervisors, etc. More discussion with stakeholders is not a goal in itself, but should be encouraged in the interests of better security or better understanding of the complexities and risks in pension schemes. Such discussions could lead to better alignment of the expectations of various parties about the outcomes and the risks that are involved.</p> <p>We agree with EIOPA’s view that a new KIID-like document should be introduced and should be extended with information on contribution arrangements, practical information and cross-references to other documents. We also think that harmonisation could be of added value to the member, but is at an EU-level very difficult because of the differences between the different countries.</p> <p>We do think that the HBS should be made public and communicated to stakeholders and especially plan members (present employees , retired and reversion beneficiaries) so that the employees get a better understanding of the exact nature of the promise being made to them and assess better the financial</p>	
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			aspects of the plan sponsor covenant. Now that the trend in occupational pensions is moving from guaranteeing a formal level of pension to a soft promise where the level of pension delivered will be a function of the financial means of both the pension fund and the plan sponsor company governance implies that more honest and transparent information must be delivered to plan members.”	
62.	European Association of Public Sector Pension Inst	General comment	<p>Before answering in detail the questions of this consultation document, the European Association of Public Sector Pension Institutions (EAPSPI), which covers 25 pension institutions and associations of the public sector out of 16 European countries, would like to make the following general remarks:</p> <ul style="list-style-type: none"> <input type="checkbox"/> EAPSPI fully agrees with the aim of the Commission in the Call for Advice of April 2011, according to which a risk-based supervisory system for IORPs should be developed on the basis of the IORP Directive as the starting point. This approach is justified due to the basic differences between IORPs and insurance undertakings, as EIOPA itself has identified several times in this consultation document. Therefore, EAPSPI has reservations that in spite of this commitment, this consultation document is built on the Solvency II structure. <input type="checkbox"/> Any legal initiative at EU-level has to respect the diversity of IORPs in the EU-Member States. This variety is due to cultural and historical reasons that have entailed quite different concepts of occupational pensions. This diversity was acknowledged in the Commission’s Green Paper on Pensions of July 2010, which “does not suggest that there is one ‘ideal’ one-size-fits-all pension system design”. This diversity continues with the different security rules and mechanisms that Member States have elaborated for beneficiaries’ protection. <input type="checkbox"/> As a result of this uncontested diversity, EAPSPI wonders whether any harmonization of supervisory and also of solvency rules will be feasible. In this context EAPSPI would like to recall a recent OECD-study that also underlined the potential difficulty of a common approach to solvency. The study by Yermo 	<p>Noted</p> <p>The comment about the high degree of diversity of pension arrangements across the EU member states weakening the case for harmonisation has been recorded in the introductory chapter</p> <p>The point about involvement of social partners in the governance of IORPs has been recorded in the introductory chapter</p>

		<p>and Severinson (2010), “The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-Cyclical Funding Regulations” came – among others – to the conclusion that “international standardization of funding regulations is unlikely and that in any case it would risk being ill-fitting across jurisdictions.”</p> <ul style="list-style-type: none"> <input type="checkbox"/> In the context of ageing societies and budgetary constraints, workplace pensions must generally be promoted to compensate the benefit cuts in social security schemes by means of cost-efficient additional benefits. Hence, excessive regulatory rules might be counterproductive for a further promotion of supplementary funded workplace pensions. Furthermore, excessive regulatory rules might endanger already existing well-functioning pension schemes. Against this background, the principles of subsidiarity and proportionality deserve particular attention. <input type="checkbox"/> Due to these potential dangers for IORPs a thorough impact assessment prior to any legislative initiative is inevitable, including micro and macro-economic consequences. <input type="checkbox"/> Social partners have an important role in this field, e.g. in public sector pensions schemes in Scandinavian countries, in the Netherlands or in Germany. Social partners do not only help to promote supplementary pensions by means of collective agreements for large parts of the population, but they also play an important role in the governance by their representation in the internal supervisory bodies. Their function and importance should hence be considered in the further discussion. <input type="checkbox"/> Finally, EAPSPI regrets the very limited time frame of this consultation. EAPSPI therefore has decided to study only certain aspects of the consultation document. 	
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63.	European Central Bank, Directorate General Statist	General comment	<p>The Directorate General Statistics (DG-S) of the European Central Bank (ECB) has the task to compile harmonised financial statistics for the euro area, which are input into the analyses and decision making of the ECB. The ECB is also providing statistical support to the European Systemic Risk Board (ESRB), which will, amongst other information needed, also require statistical information on pension funds in the EU. The alignment of concepts and data collections for supervisory and monetary policy purposes is desirable in order to limit the reporting burden on the industry, and to enhance the coherence of statistical information. Against this background, DG-S welcomes the opportunity to provide comments on the consultation regarding the review of the Directive 2003/41/EC.</p> <p>The enclosed comments are provided not only from a monetary statistics perspective but also from a macro-economic and financial stability perspective, providing a broad view on the statistical requirements of the ECB, and taking into account also comments received from the European System of Central Banks (ESCB) via the Working Group on Monetary and Financial Statistics. This consultation may contribute to the ECB's long term objective of bundling supervisory and statistical reporting requirements to the extent possible, in servicing the need for improved statistics for the pension funds sector. While the information needs of supervisors (micro-perspective) may differ from statistical and macro-prudential requirements, the reporting burden on undertakings can be reduced by aligning supervisory and statistical reporting to the extent possible, with differences (in concepts and definitions) being clearly identified.</p> <p>The ECB's competencies to collect statistical data for the pension fund sector are laid down in Council Regulation (EC) 2533/98 as amended. Similar to the ongoing project to develop ESCB statistics based on the new supervisory reporting requirements under Solvency II for insurance corporations, the ECB considers that future supervisory reporting requirements concerning pension funds could significantly contribute to the information basis that will be required by the ESCB under a "steady-state approach" for pension funds statistics. While ECB regulations in the field of statistics contain reporting requirements which</p>	Noted

			<p>are binding for reporting agents resident in the euro area, the statistical reporting requirements could be met, in part or in full, through a re-use of existing or forthcoming other, e.g. supervisory, reporting.</p> <p>Taking into account the early stage of the review of the IORP Directive, the ECB answers on this consultation do not go into details of future data reporting. Instead the answers explain the general requirements which future reporting would need to meet in order to be an appropriate basis for ESCB statistics. Answers are provided only to those questions in the consultation that might impact on future reporting requirements. No answers are provided on supervisory requirements and procedures, since these policy issues goes beyond the scope of ECB's statistical requirements.</p>	
64.	European Federation for Retirement Provision (EFRP)	General comment	<p>The fundamental premise in the Call for Advice is that supervisory regulation should be risk-based. The EFRP agrees with this starting point and supports this. The proposals in the field of risk management, governance and communication will improve the current directive and further facilitate workplace-based pension provision. We wholeheartedly support the EC's objective to achieve sustainable, safe and adequate pensions and to raise the awareness of European citizens to save for their pensions.</p> <p>In the draft response to the Call for Advice the principle of a risk-based approach is extended, however, to imply that risk-based capital requirements should be harmonized on a European level, with a strong focus on pension security and scheme funding levels. The EFRP firmly disagrees with these proposals. The key objective should be pension security for members. The EFRP fears that the proposed holistic balance sheet approach will not contribute to this objective and could, indeed, run counter to the objectives of security, adequacy and sustainability.</p> <p>To the EFRP the debate on workplace pension provision and the rules by which workplace pensions are provided is a political one and not simply a technical</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p> <p>The point on impact assessment is noted; each chapter now contains an impact assessment and the introductory chapter sets out in broad terms the process and</p>

		<p>one. The EFRP therefore calls for a political debate within the European Commission and with stakeholders and national governments. The approach to EU pension policy should be all-encompassing, since pensions are an issue for all European citizens. The revision of the IORP Directive should be closely linked to other EC pension-related initiatives, such as the EC White Paper on Pensions, and macro-economic and growth-related initiatives. In particular, the White Paper and the review of the IORP Directive must have regard to the most pressing issue affecting the European Union and its citizens, namely economic growth and employment and the factors at the heart of the 'Europe 2020 Strategy'. A strong European economy and full employment are critical to good quality pensions (mandatory first pillar and workplace second pillar) for Europe's citizens, now and in the future. We are very concerned that the additional strains placed on employers by the proposed harmonized capital requirements could weaken pension scheme adequacy, decrease the supply of risk-bearing capital in the EU economy and increase unemployment.</p> <p>Pension security is about much more than scheme funding levels alone. An all-encompassing approach should take into account the full range of mechanisms that pension institutions in different Member States already use to ensure that pensions are safe and secure. This also includes the degree of reliance on the first pillar (mandatory state) pensions. Any assessment of work-based pension scheme security must recognise the diversity of pension systems across the Member States and security mechanisms used to provide adequate workplace pensions. One should focus on long-term sustainability of pension schemes rather than on their short-term solvency levels.</p> <p>According to the EFRP, the risk level of a pension promise is currently part of the pension agreement itself. Other elements are, for example the accumulation of pension rights, the contribution level and whether or not there is indexation. This balance is different in all the Member States and is intertwined with national Social and Labour Law.</p>	<p>scope of a quantitative impact study.</p>
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			<p>Therefore, the EFRP believes the IORP review should not cover the Pillar I issues of Solvency II, but instead should focus on the Pillar II and Pillar III elements. The Pillar I elements of Solvency II should not be included in the revised IORP Directive. On the other hand, many elements from Pillar II and Pillar III could be adapted to cover IORPs. The EFRP believes that it is crucial to respect the principle of proportionality.</p> <p>The EFRP is very concerned about the probable effects on employers, members and future beneficiaries if the Pillar I elements of Solvency II were to be applied to IORPs. Applying to IORPs the same Solvency Capital Requirements as in the Solvency II Directive would result in a drastic increase in their required assets. In the short term, pension funds would have to ask their employers, companies and employees for extra support. It would be unlikely that employers could provide this extra money or these required additional assets. If that is not possible, this will lead to lower benefits. The EFRP is also concerned that Solvency II Capital Requirements could lead to a de-risking of investment portfolios – shifting pension fund investments out of equity and into fixed interest investments – threatening future returns and thus, benefit levels.</p> <p>It is not only the retirees, employers and employees that would be affected by a Solvency II regime for IORPs. There would also be negative effects on the total European economy as higher pension contributions and sponsor support automatically lead to higher labour costs and that will make the European economy less competitive. In addition, less capital will be available for investments which will have a negative impact on employment. Lower pension benefits will hurt the purchasing power of retirees and thus consumption in Europe.</p> <p>As a consequence of derisking investment portfolios, there would also be less capital available to companies. This would happen at just as the EU is looking for investment in EU companies. IORPs are important suppliers of capital to</p>	
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			<p>listed European multinational corporations, small and medium-sized enterprises (SMEs) as well as a great number of innovative start-ups. A Solvency II regime for IORPs would overly limit their opportunities. This outcome would have a negative impact on growth and employment in the European Union. The proposed revision is not in line with Europe 2020 Strategy. In addition, we are concerned that the EU debt crisis has already reduced FDI in European companies.</p> <p>The aim of safe, sustainable and adequate pensions in Europe would also be jeopardized. With many countries scaling back public pensions, the foremost priority should be ensuring wide scale coverage of supplementary workplace pensions. One main challenge for policymakers should be to extend the provision of workplace pensions of EU citizens who presently are not covered by workplace pensions. The EFRP recalls the intention of the Commission not to negatively affect the supply and cost-efficiency of occupational retirement provision in the EU.</p> <p>Given the potential negative impacts of the revision of the IORP Directive, it is essential that a thorough impact assessments will occur; before any legislative proposals are made. These impact assessments should takes account of both the macro- and micro economic consequences of the proposals. The advice of thorough impact assessments must be a core element of EIOPA's advice to the Commission.</p>	
65.	European Fund and Asset Management Association (EFAMA)	General comment	<p>EFAMA is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 56 corporate members approximately EUR 13 trillion in assets under management of which EUR 7.7 trillion was managed by approximately 54,000 funds at end September 2011. Just above 36,200 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds.</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

		<p>Reasons for reviewing the IORP Directive: the European Commission gave three main objectives for reviewing the IORP Directive:</p> <ul style="list-style-type: none"> <input type="checkbox"/> simplifying the setting-up of cross-border pension schemes; <input type="checkbox"/> securing modernisation of prudential regulation for IORPs which operate DC schemes; and <input type="checkbox"/> allowing IORPs to benefit from risk-mitigation mechanisms. <p>We would like to emphasize the importance of ensuring a proper balance between these three objectives. We fear that the subsidiarity principle according to which pensions and pension systems are the responsibilities of Member States will result in limited progress toward the achievement of the first objective. This would not be suitable. As Commissioner Barnier has recently emphasized, there are still very few cross-border pension funds in Europe. It is therefore important to revise the Directive to enable employers and employees to reap the full benefits of the single market.</p> <p>We are also concerned by the fact that there are considerable trade-offs between the three objectives. In particular, while the implementation of some of the proposed new regulatory measures might increase of the level of security offered by IORPs, many of these measures will increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity.</p> <p>It would also be incongruous that the IORP Directive review would ultimately lead to a reduction in the number of employees being covered by DB schemes, whereas one of the most important challenges facing Europe today is the low</p>	<p>The point that many IORPs are small in size has been recorded in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p> <p>The comment on pro-cyclicality has been recorded in the introductory chapter</p>
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			<p>level of penetration of occupational pension schemes and the looming decline in replacement rates from public pensions. Thus, it is vital to find the right balance between the objectives of wanting a high level of a high security level for all occupational schemes and of improving citizens' access to complementary occupational and private pensions.</p> <p>Cost to employers and beneficiaries: there is considerable concern that the imposition of Solvency II style regulation on existing employer based pension schemes could add costs to employers or reduce the level of benefits for beneficiaries. Many experts believe that the additional burdens outweigh any perceived benefits particularly for closed DB schemes, and would accelerate the decline in provision of occupational retirement solutions. The first objective of encouraging cross border pension schemes would not seem relevant in many of these instances. In regards to DC pension schemes the application of additional capital for operational risks and other similar measures would reduce the benefits payable on retirement. Therefore, one of the main concerns of applying sections of Solvency II to pensions schemes would be if that had the effect to discourage the offering of pension savings through the workplace (which has been an effective way to create pensions savings schemes) or work to discourage savings in DC style schemes, then the burden of supporting retirees would fall on the state. This would be an undesirable consequence, and one to be avoided, especially at a time when the authorities' goal should be to put more emphasize on the engagement of EU citizens towards pensions in general.</p> <p>Risk-based supervision for IORPs: we fully support the European Commission's view that all IORPs should benefit from the risk-mitigating security mechanisms at their disposal. And we also support Commissioner Barnier's goal to contribute to the creation of "a modern and innovative system founded on risk-management, corporate governance and effective supervision" (see speech dated 16 November in Francfurt).</p>	
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		<p>In our view, the main goal of any revision of the solvency regime for IORPs in that direction would be to ensure the protection of pension scheme members and beneficiaries. This is not to guarantee that the level of security offered by all IORPs across Member States is the same, for the simple reason that Member States have different views on the relative merits of capital requirement and other mechanisms such as the level of commitment from the sponsor and pension protection schemes. In other words, we understand the desire of the European Commission that the level of security offered by all IORPs be similar across Europe. However, we believe that there can be differing ways to achieved the desired level of security.</p> <p>From this perspective, it is essential to focus on the security of the pension promise made to the members and beneficiaries, which may include, for instance, ex-ante or ex-post reduction of benefits in adverse scenarios.</p> <p>We would also like to stress the fact that a risk-based approach should not be interpreted as a capital-based approach. The rules on governance, the supervisory review process, the rules on information disclosure to supervisory authorities and to members/beneficiaries are also essential to protect pension scheme members and ensure that they are properly informed about the exact nature of the pension promise.</p> <p>Consistency across financial sectors: EFAMA is a strong supporter of the objective of maintaining consistency across financial sectors. In this respect, we agree that the new supervisory system for IORPs should be constructed in a way that avoids regulatory arbitrage between and within financial sectors. We disagree, however, with the position that the approach and rules used for the supervision of life assurance undertakings subject to the Solvency II Directive should be the main reference for the proposed new measures and mechanisms. The implicit goal of the IORP Directive review should not be to harmonize the prudential regime for IORPs and life assurance undertakings.</p>	
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			<p>Differences between IORPs and insurers: we recognize that EIOPA stressed that there are important differences between IORPs and insurers, and tried to reflect those differences in its analysis. In our view, the most important differences are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The ability of sponsor backed IORPs to rely on the sponsor <input type="checkbox"/> The conditionality of pension rights <input type="checkbox"/> The duration of pension portfolios <input type="checkbox"/> IORPs are not profit making organisations and their mission is to provide secure and sustainable pensions to their members. <input type="checkbox"/> IORPs are in general much smaller than insurance companies <p>Security mechanisms: as a general comment, it is not clear that the concepts discussed in Chapter 10 can easily be transferred into the multiple regimes of pensions and the additional costs are likely to impact the returns that a pensioner can expect from the pension scheme. We believe that shortening recovery plans would place increased pressure on corporate sponsors and discourage the provision of work place pensions. We also believe that the application of operational risk capital have the consequence of reducing the value of savings over time with little extra benefit.</p> <p>Quantitative Impact Study: it is not possible to support the proposed new regulatory framework for IORPs without knowing what would be the likely quantitative impact of the new regime, in particular regarding the additional costs and administrative burden. We believe it would be useful to integrate the following considerations in the preparation of the QIS.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Security: we support the importance given by EIOPA to the protection of pension scheme members and beneficiaries. This means that the increased level of security that should follow from the proposed strengthening of the prudential regime for IORPs should be measured appropriately in the QIS. This 	
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		<p>will require using a robust and developed methodology to assess the intrinsic contribution of the proposed measures to the overall objective of higher security. The methodology to be developed should in particular addresses the following questions:</p> <ul style="list-style-type: none"> o What is the positive impact that should be given to higher security in Member States where IORPs are already offering an undisputed high level of security? In considering this question, EIOPA should recognize that when a certain level of security is reached, the benefits of additional measures in terms of higher security will be lower than the costs for the IORPs, sponsoring undertakings and the pension scheme members. o How will the overall measurement of the positive impact of new security measures take into account of the differentiated impact across Member States? In considering this question, EIOPA should refrain recommending new harmonized measures if the expected benefits of these measures is driven by a supposedly insufficient level of security in a group of countries. In other words, the costs associated with the proposed approach to the calculation of capital requirements should not be imposed to all IORPs in Europe to solve a security problem affecting only some Member States. The right way forward in addressing this problem is for EIOPA to recommend that the Member States concerned adopt measures to strengthen their occupational pension system. <input type="checkbox"/> Cost of reporting: The additional requirements in terms of reporting will be onerous for many IORPs. The QIS will have to properly identify and calculate these cost elements. <input type="checkbox"/> Qualitative impact: in order to be able to give a technical advice on a number of issues, EIOPA should take into account qualitative aspects. A key challenge in this context will be to attach a value to these qualitative issues. In 	
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		<p>the discussion regarding the solvency framework of IORPs, this would require among other things to value the sponsor's support and benefit adjustment mechanism.</p> <p><input type="checkbox"/> Macroeconomic and financial impact: It is clear that Solvency II is in favor of bonds but not in favor of equities despite the fact that this is an asset class which is needed to diversify and which is long term because it has an endless duration. This has already led to an overall reduction to insurance company asset allocation to equities, and other asset classes like real estate, and we fear that as the regulations come into force this trend could be accelerated. Applying Solvency II style regulation more broadly would weigh heavily on these asset classes and make it more difficult for companies to raise equity, thereby constraining the long-term financing companies and the growth potential of the European economy. It could also deny pension investors from investing in inflation hedging assets that are suited to matching long duration liabilities. For these reasons, the relative risk asset charges embedded in the Solvency II standard formulae are considered by many pension funds to be counterintuitive and likely to discourage them from holding non-government risky assets, including long-term credit, structured credit, equities and alternatives. Consequently, pension funds may sell a significant proportion of these assets over a relatively short period of time around the implementation date of Solvency II. Furthermore, for the market it would be very negative when all investors with long liabilities have to invest under the same rules, if even their structure is very different. This would lead to a very similar behavior of all market participants which would increase volatility and contribute to systemic risk. In this respect, we strongly agree with the view that IORPs can serve as a stabilizer for markets if they are not regulated in a way that causes pro-cyclical effects. The QIS should therefore take into account the negative macroeconomic and financial impacts, in particular regarding market volatility and pro-cyclical effects.</p> <p>Conceptual approach to solvency rules: EFAMA believes that the Solvency II</p>	
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			<p>framework for IORPs should take into account a least the following aspects of the occupational pension market:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The various specificities of the vehicles in question. Each vehicle has different funding requirements and could operate in its own capacity, through an IORP subsidiary or through providers (i.e. a bank, asset management entity, an issuer etc.). <input type="checkbox"/> The specificities of the products run and offered through the vehicle and whether it is a pure DC scheme. If a scheme does not contain any guarantee and/or biometric risk coverage, the market and longevity risks are borne by the member. <input type="checkbox"/> The specificities of the risks involved. Traditionally, only financial risks have been taken into account. However, other factors could be considered. EIOPA has identified eight different types of risks in a recent study. <input type="checkbox"/> Who bears that risk, whether it is the employer, the employee or the vehicle itself? If it is the vehicle, capital should be required. <input type="checkbox"/> The specific role of the pension vehicle and whether it is to play an essential role in pension provision or to offer an additional source of retirement income. 	
66.	European Metalworkers Federation	General comment	<p>1. EMF regrets that the consultation period on such a complicated and highly technical topic is taking place within such a short time frame. It might influence the quality and quantity of the response. A topic with such massive and long-term impact does not combine with the time pressure on respondents</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is</p>

		<p>and the processing responses. The given format with specific questions limits us as respondent and does not mean that we agree to everything that is proposed and not specifically asked.</p> <p>2. Second-tier retirement provisions are primarily the domain of social partners and the regulation the domain of the Member State, so by definition the subsidiarity principle applies. EU regulation might elevate the weakest but also disturb tailor-made best practices. Extreme financial and administrative demands might raise the operational costs to unacceptable levels.</p> <p>A level playing field between operators is often brought forward as one of the objectives that should be achieved. In most Member States, IORPs are not-for-profit institutions established by social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). In many Member States they have their own specific adjustment and security mechanisms, very different from the way commercial insurers operate. And last but not least, many pension funds have a form of democratic control. They have a fundamentally different activity to that of a commercial undertaking, and should therefore not be treated in the same way.</p> <p>3. Following all of EIOPA's proposals would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financing cost for the scheme's sponsor(s).</p> <p>4. A review of the IORP directive cannot be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of a political nature.</p> <p>5. The goal of the regulation should consist in facilitating the existence of good pension schemes for European workers and citizens. In a number of Member states pension schemes have existed for a long time. They are regulated and function well, and have a good track record of delivering pensions for successive generations. The aim of the directive should not be to bring new regulation to systems that function well in Member States that have already a sound regulation in place.</p>	<p>recorded in the introductory chapter</p>
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			6. The freedom of social partners to negotiate on occupational pensions should not be hindered.	
67.	European Mine, Chemical and Energy workers' Fede	General comment	<p>1. EMCEF regrets that the consultation period on such a complicated and highly technical topic is taking place within such a short time frame. It might influence the quality and quantity of the response. A topic with such massive and long-term impact does not combine with the time pressure on respondents and the processing responses. The given format with specific questions limits us as respondent and does not mean that we agree to everything that is proposed and not specifically asked.</p> <p>2. Second-tier retirement provisions are primarily the domain of social partners and the regulation the domain of the Member State, so by definition the subsidiarity principle applies. EU regulation might elevate the weakest but also disturb tailor-made best practices. Extreme financial and administrative demands might raise the operational costs to unacceptable levels.</p> <p>A level playing field between operators is often brought forward as one of the objectives that should be achieved. In most Member States, IORPs are not-for-profit institutions established by social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). In many Member States they have their own specific adjustment and security mechanisms, very different from the way commercial insurers operate. And last but not least, many pension funds have a form of democratic control. They have a fundamentally different activity to that of a commercial undertaking, and should therefore not be treated in the same way.</p> <p>3. Following all of EIOPA's proposals would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financing cost for the scheme's sponsor(s).</p> <p>4. A review of the IORP directive cannot be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of a political nature.</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>5. The goal of the regulation should consist in facilitating the existence of good pension schemes for European workers and citizens. In a number of Member states pension schemes have existed for a long time. They are regulated and function well, and have a good track record of delivering pensions for successive generations. The aim of the directive should not be to bring new regulation to systems that function well in Member States that have already a sound regulation in place.</p> <p>6. The freedom of social partners to negotiate on occupational pensions should not be hindered.</p>	
68.	European Private Equity & Venture Capital Associat	General comment	<p><input type="checkbox"/> The European private equity and venture capital industry welcomes the opportunity to comment on EIOPA’s Response to Call for Advice on the review of Directive 2003/41/EC: second consultation. EVCA will focus its comments on this consultation on the areas of key relevance relating to the private equity and venture capital industry.</p> <p><input type="checkbox"/> EVCA is still not convinced of the justification for a revision of the IORP Directive: EVCA demands a thorough and comprehensive impact assessment study to be conducted before any revision is proposed. Such impact study must in particular include the macro-economic impact such new rules may have, which seem to have been widely disregarded up to now. EVCA wishes to point to the adverse impacts on economic growth and long-term investment, such as investment in infrastructure, real estate and non-listed companies, in particular small- and medium-sized companies, the backbone of the European economy. In addition much of the EIOPA and European Commission documents are inspired by a “consumer protection” language. EVCA considers this inappropriate. Occupational pension plan members do not freely choose a pension. It is therefore not a financial product but a not-for-profit scheme.</p> <p><input type="checkbox"/> Pension funds invest in the private equity and venture capital asset class as the characteristics of such investments corresponds well with their long-term investment horizon and meets their interest to invest in an asset class of substantially different characteristics compared to listed equities and bonds. Private equity funds, which operate over at least a ten year period, have for many years been trusted by many of Europe’s largest stewards of current and</p>	Noted

			<p>future pensioner's income as a source of stable, strong, risk adjusted returns. This explains why, in the period from 2006 - 2010, pension funds accounted for over 36% of all funds raised by the European private equity industry.</p> <p>□ As well as delivering strong returns to pension funds - critical for defined benefit funds to be able to meet their pension liabilities as they fall due - private equity also provides the long-term investment needed to deliver growth in the real economy. It is this long-term growth, sustained by long-term capital, that provides a foundation for job creation, investment and tax revenues. Over the past four years, European pension funds have invested €53bn, via private equity, in European companies. A total of 83% of private equity backed companies are small to medium sized enterprises ("SMEs"), which constitute the backbone of the European economy.</p>	
69.	European Private Equity & Venture Capital Associat	General comment	<p>□ The European private equity and venture capital industry welcomes the opportunity to comment on EIOPA's Response to Call for Advice on the review of Directive 2003/41/EC: second consultation. EVCA will focus its comments on this consultation on the areas of key relevance relating to the private equity and venture capital industry.</p> <p>□ EVCA is still not convinced of the justification for a revision of the IORP Directive: EVCA demands a thorough and comprehensive impact assessment study to be conducted before any revision is proposed. Such impact study must in particular include the macro-economic impact such new rules may have, which seem to have been widely disregarded up to now. EVCA wishes to point to the adverse impacts on economic growth and long-term investment, such as investment in infrastructure, real estate and non-listed companies, in particular small- and medium-sized companies, the backbone of the European economy. In addition much of the EIOPA and European Commission documents are inspired by a "consumer protection" language. EVCA considers this inappropriate. Occupational pension plan members do not freely choose a pension. It is therefore not a financial product but a not-for-profit scheme.</p> <p>□ Pension funds invest in the private equity and venture capital asset class as the characteristics of such investments corresponds well with their long-term investment horizon and meets their interest to invest in an asset class of</p>	Noted

			<p>substantially different characteristics compared to listed equities and bonds. Private equity funds, which operate over at least a ten year period, have for many years been trusted by many of Europe’s largest stewards of current and future pensioner’s income as a source of stable, strong, risk adjusted returns. This explains why, in the period from 2006 - 2010, pension funds accounted for over 36% of all funds raised by the European private equity industry□.</p> <p>□ As well as delivering strong returns to pension funds - critical for defined benefit funds to be able to meet their pension liabilities as they fall due - private equity also provides the long-term investment needed to deliver growth in the real economy. It is this long-term growth, sustained by long-term capital, that provides a foundation for job creation, investment and tax revenues. Over the past four years, European pension funds have invested €53bn, via private equity, in European companies. A total of 83% of private equity backed companies are small to medium sized enterprises (“SMEs”), which constitute the backbone of the European economy.</p>	
70.	European Public Real Estate Association (EPRA)	General comment	<p>The European Public Real Estate Association (EPRA) welcomes this opportunity to provide comments on EIOPA’s draft response to the European Commission’s call for advice on the review of the 2003 IORP Directive. EPRA is the voice of the European publicly traded real estate sector and represents publicly listed property companies, (including REITs), the investment institutions who invest in the sector and the firms and individuals who advise and service those businesses. The institutional investors that EPRA represent include the largest pension funds in Europe with a long track record of investment into the real estate sector. Between them our 200 members represent over €250bn of real estate investments.</p> <p>Given the short time period that has been made available for consultation, our response has focused on general comments and questions raised in Section 11 Investment Rules and Section 20 Risk Management Rules. We hope that these initial comments are helpful in giving you an overview of positions and welcome the opportunity to engage with you further on specific issues.</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

		<p>If you have any questions relating to this response to the consultation, please contact Gareth Lewis using the details below:</p> <p>Gareth Lewis – EPRA, Director of Finance T +32 (0)2739 1014 gareth.lewis@epa.com Square de Meeus 23, B1000 Brussels • Belgium www.epra.com</p> <p>Harmonisation of the European pension system & the development of best practices</p> <p>The growth of a sophisticated defined contribution environment is critical for Europe in order to meet the retirement needs of the European population. If Europe is going to have any chance of succeeding in this challenge, there will need to be a rapid evolution of DC schemes in Europe.</p> <p>Throughout Europe, each Member State has its own unique pension system. Harmonisation of such different systems is unlikely to be achieved within a timescale that addresses the critical issues. EPRA therefore welcomes the Commission’s previous acknowledgement that pension systems are largely the responsibility of Member States and its focus on internal market and non-discrimination aspects of the subject, rather than attempting to develop a comprehensive regulatory framework.</p> <p>Our view is that a key objective of any European legislation or guidance in this area should focus primarily on developing and facilitating the rapid, market</p>	
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			<p>driven emergence of 'best practice' with respect to the pension plan design and investment rules, rather than an over-emphasis on bringing all members states in alignment with an inflexible European regulatory standard.</p> <p>We strongly recommend that as part of the development of such best practices, EIOPA and the European Commission look at developments in more established DC environments, particularly with respect to default asset allocations and the recognition of real estate as a separate asset class. It is also important to note that these more established DC environments are themselves evolving as best practice develops and therefore any European framework should be structured with the flexibility to allow for similar market driven development.</p> <p>The impact of regulation and declining government bond yields</p> <p>Looking specifically at the current economic environment and the impact of the crises of recent years we observe that regulators have focused increasingly on short-term liquidity and risk (including Solvency II). As a result they are steering insurance companies and pension funds to invest a rapidly increasing proportion of their assets in government bonds. The buying pressure that this has caused has helped contribute to a sharp fall in the available returns from government bonds, as yields have fallen to record low levels.</p> <p>In an environment where efforts are being made towards a reflationary response to the financial crisis, the regulations as they currently stand are arguably forcing insurance companies and pension funds to take excessive risks with regards to future returns both in a nominal sense (given the low initial yields available on government debt) and in real terms (allowing for the risk of a rise in inflation).</p>	
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		<p>Whilst it is possible that Europe could experience a Japan-style scenario despite all of these reflationary attempts, increased inflation is the obvious way out of the currently over-leveraged economic situation. Real estate, as an asset class that has a high initial yield as well as the potential for raising rents broadly in line with inflation, has an important role to play in this regard.</p> <p>The benefits of real estate within pension schemes</p> <p>Real estate’s relatively low volatility and low correlation with other asset classes make it an important source of diversification in any portfolio, reducing overall risk without sacrificing returns. Regulatory frameworks for retirement provision and practices developed in other major global economies – particularly in the US and Australia, have reflected this conclusion and specifically included real estate as an asset class within default investment options. EPRA would be happy to provide research over the last two decades which confirms the importance of real as an asset class particularly suited to pension funds and long term investors.</p> <p>In addition, there is strong evidence, reflected in the asset allocation decisions taken by the largest global pension funds and through regulation developed in other major world economies that REITs and real estate equities offer a proxy for direct real estate investment that is importantly accessible to all institutional investors, whether large or small.</p> <p>For the purposes of this response when we refer to ‘REITs’ we mean publicly listed property investment companies that own, operate, develop and manage real estate assets for the purposes of obtaining returns from rental income and capital appreciation. Due in part to their tax status, REITs have proved to be a successful model for property investment because they create a level playing field with direct investments in property, so that individuals and institutions can</p>	
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			<p>invest in this otherwise illiquid and inaccessible asset class, irrespective of their size.</p> <p>Overriding Recommendation</p> <p>EPRA have concerns that over-regulation at either an EU or national level could restrict the development of an efficient pension fund sector in Europe and we believe that the prudent person principle is a sufficient regulatory basis for the investment of IORPs. However, EPRA recommend that the European Commission develops some form of best practice guidelines that include a default investment allocation to real estate, for DC pensions, that recognizes REITs as an accessible form of real estate investment. We believe that this would ensure that a wider range of pension funds and pension fund holders would be able to access the diversification benefits of real estate.</p>	
72.	FAIDER (Fédération des Associations Indépendantes)	General comment	<p>The Federation des Associations Indépendantes de Défense des Epargnants pour la Retraite (FAIDER) welcomes the opportunity to comment on the Response to Call for Advice on the review of Directive 2003/41/EC and thanks EIOPA for launching this consultation.</p> <p>FAIDER (Fédération des Associations Indépendantes de Défense des Epargnants pour la Retraite) is a French organization which federates several associations of life policyholders, savers and small investors, representing more than 1 million of members. In 2010, mathematical provisions of FAIDER members accounted for more than 40 billions of Euros.</p> <p>As frequently in France, these investments are made mostly in view of financing retirement.</p> <p>FAIDER is an active member of the French ACP Commission des Pratiques</p>	Noted

		<p>Commerciales and of the French AMF Commission des Epargnants and participate actively to the retail investor and consumers consultations organized by EIOPA and ESMA. In order to be more proactive and to be better heard at the European level, FAIDER created EuroInvestors (the European Federation of Investors or EFI) with Euroshareholders and other European associations, in the summer of 2009.</p> <p>FAIDER</p> <p>For further details please see our website: www.faider.org.</p> <p>Before answering to the consultation questions, FAIDER would like to point out the following :</p> <p>due to the short period of time left to the consultation and the very large number of technical questions that are raised it was very difficult for a consumer organization like FAIDER with a very limited amount of resources to respond in detail. Therefore we focused on general principles that we consider should apply in the drafting of the legislation relating to IORP. We will be happy to make more precise proposals on different aspects which directly concern consumers later in the process.</p> <p>We fully support the following statement from the GCAE :</p> <p>“We agree with EIOPA that information about pensions should be correct, understandable and not misleading. Communications to the members should also explain in simple and clear terms the principal risks implicit in the financial arrangements, how they are managed and the potential consequences of failure.</p> <p>Better communication about the purchasing power of the benefits is essential and should, we think, be an important factor in disclosure.</p>	
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73.	FairPensions	General comment	<p>FairPensions is a UK-based charity which works to promote responsible ownership by pension funds and to ensure that pension savings are invested in the long-term best interests of beneficiaries.</p> <p>We have recently completed a major piece of work on fiduciary duty, ‘Protecting</p>	Noted

		<p>our Best Interests: Rediscovering Fiduciary Obligation’, which examines the flaws in the current legal framework and makes recommendations for policymakers. The report is available at http://www.fairpensions.org.uk/fiduciaryduty, and a short briefing on its findings can be downloaded at http://www.fairpensions.org.uk/policy. Its analysis relates primarily to the UK legal regime, but it is also relevant at European level since many of the principles of UK common law are incorporated into the IORP directive – for example, the prudent person principle. There are two key points from the report’s analysis which are relevant to the questions raised in this consultation:</p> <p>1) Outsourcing: In the UK, interpretations of fiduciary duty are closely linked to the trust concept, and it is commonly assumed that fiduciary duties only apply to pension fund trustees. This is problematic in today’s complex investment landscape where the majority of investment functions are outsourced, and where several parties have influence over investment decisions (for example, investment consultants, asset managers, etc). Pension fund trustees are themselves often vulnerable to their commercial agents, for example because they lack the expert knowledge to challenge their recommendations or to fully understand their activities. This confusion over where fiduciary duties lie therefore potentially creates a vacuum of accountability. We believe this issue may extend beyond trust-based systems, raising more general issues about how to ensure genuine accountability where functions are outsourced. We elaborate on this in our response to questions 80 and 82.</p> <p>2) The prudent person principle: In a UK context, we have found that fiduciary duties tend to be interpreted narrowly as a duty to maximise return, with this in turn being interpreted as a duty to focus solely on quarterly results and ignore risks and opportunities that cannot be easily monetised. This leads to a neglect of environmental, social and governance (ESG) issues, and of macroeconomic and systemic factors, which has the potential to damage long-term investment outcomes for beneficiaries. We elaborate on this in our response to question 47. In addition, ‘prudence’ is interpreted by reference to</p>	
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			the behaviour of other investors, making trustees wary of departing from market norms even if the market is behaving irrationally. This risks exacerbating herding behaviour and pro-cyclicality: we elaborate on this in our response to question 52.	
74.	Federal Ministry of Finance, Germany	General comment	<p>Comments of the Federal Republic of Germany on the draft response of EIOPA to the Call for Advice on the review of Directive 2003/41/EC</p> <p>The German Government welcomes the opportunity to comment on the draft response of EIOPA to the Call for Advice on the review of Directive 2003/41/EC. EIOPA has presented a comprehensive analysis of the possibilities for revising Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP Directive). Given that the document is 517 pages long, it is, however, fair to ask whether this is the way to enable all stakeholders to participate in the consultation process. Less is sometimes more.</p> <p>The revision of the IORP Directive is a component of the measures set out in the European Commission's "Green Paper towards adequate, sustainable and safe European pension systems". According to the Green Paper, "an adequate and sustainable retirement income for EU citizens now and in the future is a priority for the European Union". We need to surmount the current challenges in pension policymaking to accommodate future trends – especially demographic ageing. The European Commission has produced an accurate analysis of the issues in its Green Paper.</p> <p>The objective of the initiative, namely to strengthen and secure retirement income for all EU citizens, can only be achieved if retirement schemes in all EU Member States are placed on a broad footing. The functioning of occupational retirement provisions, the second pillar, needs to be secured and advanced throughout the EU.</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The importance of proportionality is recognised in the introductory chapter and throughout the advice</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p>

			<p>The Federal Republic of Germany is one of the Member States that already has an efficient system of occupational retirement provision in place today. Over the past years, substantial efforts have been made to push ahead with the formation and expansion of occupational pensions. Given the established demographic trend and resultant financing issues facing pay-as-you-go statutory pension systems, occupational pensions have to play a major part in ensuring employees have sufficient retirement provisions.</p> <p>In Germany around 10 million people are currently in receipt of benefits from occupational pensions, with the monthly payment averaging around €400. More than half of the approximately 28 million employees paying social security contributions are accruing occupational pension entitlements with their current employer. In 2009, the assets allocated to occupational pensions stood at around €468 billion.</p> <p>The particular characteristics of the respective areas must be taken into account when developing the different pension pillars. Occupational retirement provision's specific attribute is that it is based on labour law, i.e. on personal employment contracts or collective agreements between social partners (the employers on one side and employees on the other). This means occupational retirement provision is primarily an occupational social benefit and not merely a "financial product". As a social benefit, occupational retirement provision does not compete with other financial market products either. Furthermore, employers frequently provide occupational retirement provisions as voluntary social benefits. The primacy of rules under labour law must generally be recognised under supervisory law as well.</p> <p>Where consideration is being given to applying the requirements of the EU's Solvency II regime for insurance companies (Directive 2009/138/EC of the</p>	
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			<p>European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance) to occupation retirement provision, a distinction must be drawn between the three pillars in that regime.</p> <p>As far as the qualitative requirements, e.g. adequate risk or asset liability management, are concerned, adopting these rules for IORPs with strict adherence to the principle of proportionality generally appears to be an appropriate measure.</p> <p>On the subject of reporting requirements, it may in particular be useful to create special requirements for IORPs in relation to current and prospective beneficiaries. In terms of planning their own retirement provisions in future especially, it is very important for employees in the EU to be informed at an early stage about their accrued pension rights. There is no need for public disclosure requirements to the extent that IORPs provide their services exclusively to staff members.</p> <p>Where the adoption of quantitative requirements (both the capital requirement and the valuation of technical provisions) is concerned, it must be borne in mind that specific mechanisms have often been in place for occupational retirement provision (as is the case, e.g., in Germany) which are designed to guarantee the security of the occupational pensions in full and which have their basis in labour and social law. Particular mention should be made here firstly of the employer's unlimited guarantee obligations and liability towards the employee that arise from the occupational pension the employer has promised. This means employers must themselves pay the occupational pensions if an intermediary (such as a "Pensionskasse" or a "Pensionsfonds") is no longer in a position to do so.</p>	
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		<p>The second factor of note is the specific protection provided by Germany's pension insurance association, the Pensions-Sicherungs-Verein (PSV). The PSV assumes the payment of occupational pensions in the event that an employer becomes insolvent. All employers that have made specific occupational pension commitments have to belong to the PSV by law. The membership currently encompasses around 83.300 employers – with almost all large German companies with occupational retirement commitments represented. The PSV has convincingly demonstrated its capabilities in the past. In 2009 it handled a claims volume of €4 billion that was borne by employers. The contribution rates have since been returned to the level prior to the financial market crisis.</p> <p>The unlimited guarantee obligations on the part of employers and the safeguard provided by the PSV – backed by broad swathes of the entire German economy – offer comprehensive protection for people in receipt of occupational pensions and prospective beneficiaries. A change in the capital and technical provisions requirements under the IORP Directive is therefore not necessary.</p> <p>It is most uncertain whether these specific, far-reaching safeguards deriving from labour and social law can be adequately reflected in the existing Solvency II regulatory system. Given the level of protection described and the figures stated, there is no evident reason for considering the idea of classing the guarantee obligations of employers or the PSV merely as ancillary own funds. We also do not see any grounds for the option of entirely excluding collective guarantee schemes which is contained in the draft response from EIOPA. Moreover, the employers' unlimited extended liability and collective guarantee schemes would not only have to be authorised to cover solvency capital requirements, but authorised to cover technical provisions as well.</p> <p>The existence of mechanisms such as unlimited employer liability and collective guarantee schemes is where IORPs differ from life-assurance companies. It is only in the case of IORPs without such instruments that it is possibly worth</p>	
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			<p>considering the adoption of quantitative Solvency II requirements. Where such mechanisms exist, however, including Solvency II requirements quantitatively in IORPs' proof of solvency is an unnecessary step which will merely increase the administrative costs of occupational retirement provision and reduce employers' willingness to offer such occupational social benefits.</p> <p>Negotiations concerning the Solvency II project have shown that the new system currently faces great difficulties in handling the present high levels of volatility on the financial markets which produces extreme valuations fluctuations on insurers' balance sheets. This is further reason why it does not seem advisable adopt, via the holistic balance sheet approach, the quantitative requirements of Solvency II for occupational retirement provision.</p> <p>Finally, the German Government would like to reiterate that any measure which is detrimental to occupational retirement provision in Europe must be avoided in all circumstances.</p> <p>The German Government cannot accept any process as part of revising the IORP Directive that weakens occupational retirement provision or makes it unfeasible.</p> <p>All of the measures considered – especially the transfer of quantitative requirements from the Solvency II regime – must be examined carefully on the basis of open and unbiased quantitative impact studies. We reject any prior, unilateral decision made on the basis of the Solvency II model and which is founded solely on academic experts' faith in the system.</p>	
75.	Federation of the Dutch	General comment	<p>Since the introduction of the IORP directive in 2005 the EU went through two mayor financial crises. The Dutch pension sector was hit considerably, but stood</p>	<p>Noted The point about lack of</p>

Pension Funds		<p>relatively firm, without the provision of any state support (like was the case with banks and insurance companies). Now the Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP directive explicitly underlines this role and responsibilities of individual member states. Furthermore it only refers to article 18 as subject for review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability debate.</p> <p>We are ready and look forward to cooperate with EIOPA and EC in order to further stimulate pension security. At the same time we want to stress that too much focus on capital requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by shift to individual DC). Taking into consideration the importance which the EC highlighted in its green paper on pensions vis a vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the individual member states themselves.</p> <p>But, above all we are convinced that consumer protection is paramount and therefore pension security should be based on full transparency and communication with the pension fund member. This means that we suggest to developing and proposing a set of pension system building blocks to the Member States instead of a set of stringent security rules.</p> <p>Also, the Federation of the Dutch Pension Funds (PF) would like to state that we regret that the time for consultation was so short. Even with the postponement of the deadline to the beginning of January, the PF feels that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice mid-February.</p> <p>Furthermore we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1.</p> <p>Need and purpose for revision:</p> <p><input type="checkbox"/> We would like to start with underlining that we see the point on</p>	<p>demand and differences in social and labour law being factors in the lack of cross-border schemes is recorded in the introductory chapter</p> <p>The point about the greater length of pension fund liabilities has been recorded in the introductory chapter</p>
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		<p>reviewing the IORP Directive, but we are not convinced that an overall revision of the directive is necessary given our following arguments:</p> <ul style="list-style-type: none"> o One of the reasons put forward by the European Commission to revise the current IORP Directive was the fact that pension schemes might exist that currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission means that this reason is no longer valid. We will come back to this point in our answers on the scope. o Another major reason to revise the current Directive was the stimulation of cross border activity. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand, rather than stemming from non-harmonised supervision. Also, major differences in social and Labour law and social security (i.e. first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefore conclude that this second reason to revise the IORP Directive is highly disputable. o The only plausible reason remaining for a revision in order to establish risk based supervision is to enhance security of pension arrangements that are currently not covered by any EU regulation. Looking at the scope and the impact of a review, we note that the countries that will be most affected by the review are countries with large funded schemes with defined benefit characteristics. The countries where those schemes form a large part of retirement provision do already have a sufficient national safety net. <ul style="list-style-type: none"> <input type="checkbox"/> Based on these three arguments, we conclude that a review and in a later stage an overall revision of the IORP Directive seems to be out of proportion. <input type="checkbox"/> Harmonisation of pensions <ul style="list-style-type: none"> o Throughout Europe, each Member State has its own unique pension system. Harmonisation of such different systems cannot be achieved in practice. Pensions are about security, adequacy and sustainability. The different features of the different pension systems have to be tested against these three conditions at least. In the Green Paper on pensions these three major aspects of 	
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		<p>sound pension systems have been correctly identified by the involved Directorates General. A revision of the IORP directive as kicked off by DG Internal Market should take into account the overall pension system of a Member State and address security, adequacy and sustainability.’ Therefore we doubt that a mere revision of the directive without any proposal of how to enhance the setting up of more occupational pension systems in the Member States fails to achieve the aim of the European Commission which is to reduce poverty of the elderly. We seriously put into question that cross-border activities will achieve this aim</p> <ul style="list-style-type: none"> o A unique and harmonised security level at the European level is uncalled for, as this is an intrinsic part of the pension deal that is negotiated between social partners at national level. o We repeat that IORPs differ from insurance companies. They differ from an institutional point of view by the fact that no commercial shareholders exist, but instead carry out collectively bargained pension schemes. Also, IORPs have steering mechanisms (conditional elements) that an insurance company does not have. Typically, liabilities are longer dated allowing for more recovery power and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist.. <input type="checkbox"/> Holistic balance sheet <ul style="list-style-type: none"> o The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed. o Consideration can be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool. o The answers in this response are formulated in case the European Commission decides to go through with harmonisation and the introduction of an holistic balance sheet. The fact that specific answers are formulated should 	
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			not be considered a justification of the review in itself.	
76.	Financial Reporting Council	General comment	<p>The FRC is the UK's independent regulator responsible for promoting high quality corporate governance and reporting. We consider that we are particularly well qualified to respond to this consultation due to our independence from those we regulate and our relevant expertise. We focus on high quality regulation that supports investment in the UK to generate economic growth and employment.</p> <p>We set standards for actuarial work for IORPs and insurers through the Board for Actuarial Standards. We set standards for financial statements through the Accounting Standards Board and the work of auditors through the Auditing Practices Board. We are also responsible for the UK's Corporate Governance Code which sets out standards of good practice in relation to Board leadership and effectiveness, remuneration, accountability and relations with shareholders. The FRC executive includes actuaries with pensions and insurance expertise as well as other professional such as accountants and lawyers.</p> <p>We do not consider that the quantitative requirements of Solvency II are appropriate for the broad range of structures used by IORPs in the EU to meet their purpose, the provision of retirement benefits. The proposals could lead to a substantial increase in the cost of running defined benefits pension schemes with the result that employers will shut good quality schemes or decrease benefits. There is a real risk that the proposals could lead to reduced second pillar employer sponsored pension provision and more reliance on first pillar public pension provision.</p> <p>We consider it likely that the proposals will discourage rather than promote cross-border pension provision due to the substantial increase in regulation. Therefore the proposals are very unlikely to strengthen the single market for occupational pensions.</p> <p>The proposed timescale for implementing a revised IORP Directive is very ambitious. For example, the consultation period to respond to this Response to Call for Advice is too short for us to have been able to properly consider all of the proposals in the paper and formulate a considered reply to the 96 questions. Despite its length, the Consultation Paper still does not set out proposals clearly</p>	Noted

		<p>enough for us to assess the impact of possible changes on IORPs, their beneficiaries and their sponsors. This is compounded by the absence of a full impact assessment.</p> <p>If changes are made to the IORP Directive without undertaking a thorough cost benefit analysis there is a high risk that they will result in costs to IORPs, sponsors and local supervisors significantly outweighing the benefits to beneficiaries of enhanced risk management. Furthermore, there is a risk of unintended consequences such as:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a reduction in the amounts available to provide pensions because of the increased costs of operating IORPs; <input type="checkbox"/> further closure of good quality IORPs as sponsors refuse to take on the compliance risk and are concerned about the potential impact on the market perception of their business; and <input type="checkbox"/> changes to investment behaviour as IORPs reduce risk to reduce capital requirements. This has the potential to reduce economic growth and employment in the EU. <p>We consider that the proposals need considerable further analysis. We therefore suggest that EIOPA work with stakeholders to think through the implications of its advice before making suggestions concerning the wording of a Directive. Consideration of these matters should not be deferred until the development of Level 2 implementing measures. This is particularly the case for the quantitative requirements. We would urge EIOPA to recommend to the EC that the publication of the draft IORP Directive be deferred so there can be full consideration of the potential impact and benefits with adequate time for stakeholder consultation.</p> <p>We consider that there would be considerable benefit in learning from the experience of the implementation of Solvency II for insurers to identify which aspects work well and which work less well.</p> <p>It would be helpful to segment future consultations into subject areas which would improve the quality of the responses, particularly on some of the less contentious areas.</p>	
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			<p>EIOPA recognises that IORPs are heterogeneous and also have different characteristics to insurance companies. EIOPA also recognises the need for regulation to be proportionate. We consider that the EU’s Smart Regulation agenda including principles concerning targeting, correct implementation at the right level, proportionality and an impact assessment should be followed when formulating new regulations for IORPs.</p> <p>We suggest that EIOPA considers methods which can recognise national differences and be implemented in a proportionate manner to ensure good governance such as codes of good practice coupled with a “comply or explain” approach.</p> <p>The current IORP Directive 2003/41/EC has an exemption for IORPs with less than 100 members. If the Solvency II framework is to be implemented in full there will be a significant increase in the regulation of IORPs. The current Directive 2003/41/EC consists of 40 recitals and just 24 articles. The Solvency II Directive 2009/138/EC consists of 142 recitals and 311 articles; these are to be supplemented by hundreds of pages of Level 2 Implementing Measures and Level 3 Guidelines. While we recognise that EIOPA is suggesting that a proportionate approach should be adopted for any new IORP directive, it is hard to see how around a thousand pages of regulation can be proportionate for many IORPs.</p> <p>We suggest that if the level of regulation is to be significantly increased the exemption is extended so that impact is proportionate. We suggest that EIOPA consider increasing the exemption to all IORPs with less than 10,000 members.</p> <p>We would be happy to meet EIOPA to share our views and experience.</p>	
77.	Finnish Centre for Pensions	General comment	<p>Comments of Finnish Centre for Pensions on EIOPA’s response to Call for Advice on the review of Directive 2003/41/EC (second consultation)</p> <p>The Finnish Centre for Pensions (ETK) is the central body of the Finnish statutory earnings-related pension scheme and a Finnish expert in statutory pension provision. Considering our field of activity, we have focused in our</p>	Noted

			<p>comments on EIOPA's response to CfA on the review of Directive 2003/41/EC on the possibility of extending the scope of the Directive.</p> <p>The statutory pension security in Finland consists of defined benefit earnings-related pension that accrues from work and earnings-related pensions accrue based on earnings, at an accrual rate determined through legislation. The whole Finnish earnings-related pension scheme is covered by the EC Regulations 883/2004 and 987/2009 and previously EEC Regulations 1408/71 and 574/72. According to Article 2(2) of the IORP directive, it is not applied to institutions managing social-security schemes which are covered by EEC Regulation 1408/71 and 574/72. Hence the Finnish earnings-related pension scheme does not fall under the scope of current IORP directive.</p> <p>In EIOPA's response to CfA on the scope of the IORP directive different options are mentioned: leaving the scope unchanged or different alternatives to enlarge the current scope. It is also mentioned that the dividing line between 1st, 2nd, 3rd pillars could be clarified. According to our opinion, the IORP directive should continue to be applied only 2nd and 3rd pillar schemes and the current scope of the Directive should not be extended. The Finnish statutory earnings-related pension scheme is already subject to comprehensive risk based solvency requirements on the basis of national prudential legislation. If Finnish statutory pension scheme would also fall under scope of IORP directive, it would lead to dual regulation from our point of view. This could complicate the administration of Finnish earnings-related pension system and would not bring additional legal security to the position of insured persons or pension recipients.</p>	
78.	FNMF – Fédération Nationale de la Mutualité	General comment	FNMF - Fédération Nationale de la Mutualité Française - gather 95% of french mutual societies. Gathering more than 500 mutual societies, from all sizes, FNMF members represent :	Noted The point about the need for a level

	<p>França</p>	<ul style="list-style-type: none"> - 15 billions euros of premiums on French health market (>50% of market share) in 2009 ; - 27 billions euros of assets (25% of market share) on French pillar 3 pension market. <p>Mutual societies have a non-lucrative object and do not remunerate shareholders through dividends. Apart from the potential technical and financial margin, saved as general reserves, they have a limited access to financial instruments to reinforce their own funds (no access to public offering)</p> <p>Mutual societies are governed by representatives, elected among and by the members of the mutual society.</p> <p>Given the governance of mutual societies, they are recognized as specific market players (with a social dimension) within French economy.</p> <p>Several French mutual societies provide pillar 3 pension benefits on an occupational basis and on an individual basis. Most of individual based pension schemes have an employment context because distributed with agents of the Public Service, even if not formally contractualised.</p> <p>Given these previous initial comments, FNMF does not agree with key differences between IORPs and insurers as proposed by EIOPA especially in article 2.6.5.</p> <p>French mutual societies managing pension schemes are today under the scope of the Solvency 2 directive, since France made the choice to use the article 4 of</p>	<p>playing field between the occupational pensions business of insurers and IORPs is recorded in the introductory chapter</p>
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			<p>the IORP directive.</p> <p>The first priority of EIOPA and European Commission should be to ensure a level playing field between pension schemes under the scope of the Solvency 2 directive and pension schemes under the scope of IORP directive.</p>	
79.	FNV Bondgenoten	General comment	<p>Since the introduction of the IORP directive in 2005 the EU went through two major financial crises. The Dutch pension sector was hit considerably, but stood relatively firm, without the provision of any state support (like was the case with banks and insurance companies). Now the Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP directive explicitly underlines this role and responsibilities of individual member states. Furthermore it only refers to article 18 as subject for review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability debate.</p> <p>We are ready and look forward to cooperate with EIOPA and EC in order to further stimulate pension security. At the same time we want to stress that too much focus on capital requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by shift to individual DC). Taking into consideration the importance which the EC highlighted in its green paper on pensions vis a vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the individual member states themselves.</p> <p>But, above all we are convinced that consumer protection is paramount and therefore pension security should be based on full transparency and communication with the pension fund member. This means that we suggest to developing and proposing a set of pension system building blocks to the Member States instead of a set of stringent security rules.</p> <p>Also, FNV Bondgenoten (FNV BG) would like to state that we regret that the time for consultation was so short. Even with the postponement of the deadline</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>to the beginning of January, FNV BG feels that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice mid-February.</p> <p>Furthermore we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1. Need and purpose for revision:</p> <ul style="list-style-type: none"> <input type="checkbox"/> We would like to start with underlining that we see the point on reviewing the IORP Directive, but we are not convinced that an overall revision of the directive is necessary given our following arguments: <ul style="list-style-type: none"> <input type="checkbox"/> One of the reasons put forward by the European Commission to revise the current IORP Directive was the fact that pension schemes might exist that currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission, means that this reason is no longer valid. We will come back to this point in our answers on the scope. <input type="checkbox"/> Another major reason to revise the current Directive was the stimulation of cross border activity. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand, rather than stemming from non-harmonised supervision. Also, major differences in social and Labour law and social security (i.e. first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefore conclude that this second reason to revise the IORP Directive is highly disputable . <input type="checkbox"/> The only plausible reason remaining for a revision in order to establish risk based supervision is to enhance security of pension arrangements that are currently not covered by any EU regulation. Looking at the scope and the impact of a review, we note that the countries that will be most affected by the review are countries with large funded schemes with defined benefit characteristics. The countries where those schemes form a large part of retirement provision do already have a sufficient national safety net. <input type="checkbox"/> Based on these three arguments, we conclude that a review and in a later stage an overall revision of the IORP Directive seems to be out of 	
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		<p>proportion.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Harmonisation of pensions <ul style="list-style-type: none"> o Throughout Europe, each Member State has its own unique pension system. Harmonisation of such different systems cannot be achieved in practice. Pensions are about security, adequacy and sustainability. The different features of the different pension systems have to be tested against these three conditions at least. In the Green Paper on pensions these three major aspects of sound pension systems have been correctly identified by the involved Directorates General. A revision of the IORP directive as kicked off by DG Internal Market should take into account the overall pension system of a Member State and address security, adequacy and sustainability.’ Therefore we doubt that a mere revision of the directive without any proposal of how to enhance the setting up of more occupational pension systems in the Member States fails to achieve the aim of the European Commission which is to reduce poverty of the elderly. We seriously put into question that cross-border activities will achieve this aim o A unique and harmonised security level at the European level is uncalled for, as this is an intrinsic part of the pension deal that is negotiated between social partners at national level. o We repeat that IORPs differ from insurance companies. They differ from an institutional point of view by the fact that no commercial shareholders exist, but instead carry out collectively bargained pension schemes. Also, IORPs have steering mechanisms (conditional elements) that an insurance company does not have. Typically, liabilities are longer dated allowing for more recovery power and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist.. <input type="checkbox"/> Holistic balance sheet <ul style="list-style-type: none"> o The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed. 	
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80.	FNV Netherlands Confederation of Trade Unions	General comment	<p>Comments by the Labour Foundation [full supported by FNV] on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>FNV full supports the comments of the Dutch Labour Foundation. FNV is the largest confederation of Trade unions in the Netherlands.</p> <p>These comments by the Dutch Labour Foundation [Stichting van de Arbeid] (the consultation body of the Dutch social partners at national level) [which is full supported by FNV] on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the Labour Foundation refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie]. In the present response, the Labour Foundation will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <p>1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission’s principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework.</p> <p>2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended.</p> <p>3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States.</p> <p>4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent ‘benefit adjustment mechanism’ for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p>	
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		<p>people's pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will</p>	
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			<p>be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p> <p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>The Labour Foundation notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p>	
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		<p>The Labour Foundation is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results.</p> <p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p> <p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and</p>	
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		<p>solidarity-based pension system.</p> <p>The Labour Foundation also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, the Labour Foundation wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p>	
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		<p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations.</p>	
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			<p>This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. <p>The Labour Foundation will forward a copy of these comments to the EC.</p>	
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81.	GAZELLE CORPORATE FINANCE LTD	General comment	<p>We are aware of considerable concern in the UK regarding the potential difficulties that would be created by imposing more burdensome solvency requirements. It would be absolutely essential that any new requirements were such as would not result in a further decline in pension provision in the UK, nor unreasonable financial difficulties for sponsoring employers. Certainly the introduction of capital requirements for sponsor backed scemes on the lines of those to be required for insurance funds by Solvency II would be entirely inappropriate. However we view the proposals in EIOPA-CP-11-006 as an attempt to create a conceptual framework in which the security of pension arrangements which rely on the sponsor covenant can be more objectively approached and measured.</p> <p>We have some further observations which go beyond the questions raised in the CP, as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> If the conceptual framework of a Holistic Balance Sheet is introduced it would be illogical and inconsistent not to include Book Reserve pension schemes (as are common in Germany and elsewhere). We appreciate that this would require a change to the scope of the IORP Directive. However Book Reserve schemes are funded schemes, albeit relying on the sponsor covenant rather than external assets to any extent. <input type="checkbox"/> If the "capital requirements" identified in the new framework as appropriate for the pension liabilities, after taking into account the available scheme assets, are not covered by the sponsor covenant, it needs to considered what steps should be required. For example would it be proposed that the regulator concerned be given powers to enable the benefits to be scaled back to achieve "solvency" – in the same way as there is scaling back of scheme 	Noted

			benefits under Pension Protection Schemes? Otherwise what is the value and purpose of the measurement and certification of the sponsor covenant?	
82.	Generali vie	General comment		
83.	GESAMTMETAL L - Federation of German employer	General comment	<p>The review of the Directive on Institutions for Occupational Retirement Provision (IORP directive) calls for special prudence, not least against the background that the most recent amendment has been implemented only in the last years by all member states. We would like to point out, that in particular, capital adequacy requirements ("Solvency II") should not be transposed into the IORP directive. Imposition of these requirements would cause great harm to institutions for occupational retirement provision (IORPs) and subscriber companies, and would markedly reduce the readiness of employers to enter into occupational pension commitments. This would run diametrically counter to the need to expand and strengthen occupational pension provision. IORP represent a fundamental part of the German pension system.</p> <p>It is important to consider that the readiness of German companies to offer an occupational pension is optional! The European Commission should do everything to support this voluntary engagement of our companies in this important pillar of national pension-systems.</p> <p>Incorporation of Solvency II would ignore the variety of successful national provisions to eliminate risks in the field of IORP such as the German principle of subsidiary employer liability as well as of insolvency cover by the pension protection association (Pensions-Sicherungs-Verein - PSV). In particular the last finance crisis in 2009 showed, that the legal framework of the finance authority stood the test.</p> <p>The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per</p>	Noted

			definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.	
84.	Groupe Consultatif Actuariel Européen.	General comment	<p>General / high-level comments</p> <p>The Groupe Consultatif Actuariel Européen (the 'Groupe Consultatif') is a non-political organisation, representing the associations of professional actuaries in Europe. The issue of whether, and if so the degree to which, to base a "proper system of solvency rules for IORPs" on the Solvency II Directive for insurance companies is necessarily a political question. The Groupe Consultatif does not consider that its role is to take a political stance on the issue of principle, preferring to adopt a technical standpoint in responding to this consultation.</p> <p>That said, in formulating this response Groupe Consultatif has sought to build a consensus across the actuarial professional associations of Member States and has drawn upon the assistance of many individual professionals from those associations.</p> <p>The majority view is that Solvency II may be an appropriate basis for some of the risk-based supervision elements to underpin a new IORP Directive, but not for all. There are strong views as to the degree to which Solvency II should be read across from insurers to IORPs. Actuarial associations in some countries are firmly of the view that Solvency II is entirely the wrong starting point – preferring to see a review of the existing IORP Directive in its own right, to consider where there may be 'gaps' and then for proposals to be brought forward to bridge those gaps. The Instituto de Actuarios Españoles, in particular, has set out its point of view, which we summarise as follows:</p> <ul style="list-style-type: none"> - Pension plans cover different risks from insurance contracts, some of the risks in pension plans are not insurable, and so Solvency II is not considered to be the best starting point when designing a European framework for supervising 	<p>Noted</p> <p>The point about the need for a level playing field between the occupational pensions business of insurers and IORPs is recorded in the introductory chapter</p> <p>The comment about the high degree of diversity of pension arrangements across the EU member states weakening the case for harmonisation has been recorded in the introductory chapter</p> <p>The importance of proportionality is recognised in the introductory chapter and throughout the advice</p>

		<p>pension funds. Although in an insurance contract, it is necessary to require solvency capital to ensure a sufficient probability that the insurance company will fulfill its obligations, this is not the case in a pension plan because, in a pension plan, the benefits and/or contributions are adjusted from time to time in order to restore equilibrium. If the employer has guaranteed to cover future deficits of the pension plan, this could be subject to actuarial control in the employer, and there could be many variations regarding whether the employer has given such a guarantee, or a partial guarantee subject to a limit”.</p> <p>By contrast, one association would prefer to see far greater harmonisation of the IORP regime with that for insurers than most member associations of the Groupe Consultatif would consider appropriate. However, that view principally reflects local jurisdictional concerns, arising from the fact that most domestic retirement provision is through entities covered by the Life Directives and, therefore, directly affected by the introduction from January 2014 of Solvency II and its capital requirements. (The country in question avails itself of the Article 4 derogation in the IORP Directive. Some other countries have done likewise, at least for certain elements of pension provision, and it may well be that they share a similar view, though we cannot confirm or refute this point at this stage.) The concern is that, from January 2014, there will not be a ‘level playing field’ and unfair competition will develop between domestic providers and those pension institutions covered by the IORP Directive. If a way could be found to reverse pension provision (by entities covered by the Life Directives) from the Solvency II Directive into the (revised) IORP Directive, then it is likely that this country would also support a less rigid application of, in particular, the solvency capital (Pillar 1) provisions of Solvency II to IORPs.</p> <p>The majority of our member associations generally consider that there is no unique solution which will cover all types of IORPs. Some IORPs bear very little similarity to insurance undertakings and the risks they face can also be quite different. Other IORPs have many similarities with insurers. For the latter, far more of the elements of Solvency II – duly adjusted – would appear to have merit in being used as the basis for a risk-based supervisory regime than would be the case for the former.</p> <p><u>In the detailed responses below to the questions in the consultation document,</u></p>	
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		<p>the majority view of Groupe Consultatif is given. It should be noted that some member associations take different views, or have country-specific points to make, and may, accordingly, respond separately to this consultation, in addition to supporting the Groupe Consultatif's submission.</p> <p>Other general points</p> <p>Timescale</p> <p>It is acknowledged that the timescale for consultation has been short. This has presented difficulties in ensuring that issues have been adequately considered and aired. The Groupe Consultatif believes that many of the proposals need to be thought through further and, in some cases, made the subject of additional research and technical analysis. Although we accept that many of the proposals may appear to have merit from a technical perspective, it is essential that the desire to achieve a technically 'neat' solution does not outweigh practical challenges and trigger unforeseen consequences.</p> <p>Quantitative impact assessment</p> <p>To counter this the Groupe Consultatif considers that it is essential to test proposals for technical solutions (and greater harmonisation between insurers and IORPs) by detailed cost benefit analyses which consider the wider macroeconomic effect as well as the specific effect on IORPs and, where applicable, the employers and employees financing them.</p> <p>Proportionality</p> <p>The majority of Groupe Consultatif members consider that many of the pillar 2 and pillar 3 proposals appear to have merit, subject to the aforementioned impact assessment. However, even here it is essential that technically attractive proposals do not have adverse practical consequences. We are pleased that EIOPA has acknowledged that proposals must be proportionate, but again this is simple to say but complex to implement. It is likely that there will be different measures as to what constitutes 'proportionate' – for example, in relation to a particular proposal proportionality could be considered in terms</p>	
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		<p>of 'cost' to IORPs (where this could threaten viability), whereas in another it might be more directly related to the size of the IORP (its liabilities) or the 'risk' it represents.</p> <p>Terminology</p> <p>Throughout this document the term 'member' is used to denote those who are either actively accruing rights under an IORP, those who have accrued them but not yet brought them into payment and those who are in receipt of benefits under the IORP. We are aware that different terminology is used in different countries in relation to these categories of people and have therefore used 'member' in an all encompassing way.</p> <p>General points relating to specific Calls for Advice</p> <p>Valuation of assets, liabilities, technical provisions and security mechanisms</p> <p>As the preamble to CfA 5 and CfA 6 makes clear, answers to the questions posed in CfA 6 are heavily dependent on the proposed introduction of the Holistic Balance Sheet (HBS) concept. We believe further research is needed on how the HBS might work – particularly as there could be 'knock-on' effects that we have been unable to analyse within the short timescale permitted for the consultation. We would also welcome greater clarity over exactly how EIOPA envisages that the HBS would be used. In particular we would welcome clarification over what types of HBS results would be expected to lead to specific actions, especially actions by supervisors, and what those actions might be. These clarifications should also include proposed transitional arrangements. We believe that, to the extent that any new requirements may impose additional capital burdens on IORPs or their sponsors, suitable transitional arrangements would be necessary to reduce what might otherwise be a significant impact on capital markets. The issues are of such significance that we would not expect any new requirements to be implemented without further consultation, supported by an impact assessment as well as credible research on whether, and if so how, items like sponsor covenant would be valued in a consistent way across sectors and Member States.</p> <p>In case it is not clear, our understanding of the HBS is that it would involve</p>	
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		<p>including in the balance sheet as assets (or liability offsets) values ascribed to security mechanisms in addition to those that would be recognised in a conventional balance sheet. Examples of security mechanisms that might be incorporated in an HBS include sponsor covenants, insolvency protection schemes, penalties on sponsors for solvent 'walk aways' and conditional benefit structures. An IORP that would otherwise be deemed 'insolvent' because it had insufficient tangible assets to meet its liabilities according to a conventional balance sheet might therefore be deemed 'solvent' according to an HBS if the additional security mechanisms were deemed sufficiently strong and valuable to the IORP members. Unless otherwise stated, we have assumed that the HBS would be drawn up from the perspective of the IORP members, and thus the additional components that it would include would involve mechanisms that relate to the security of their benefits.</p> <p>Information to members / beneficiaries</p> <p>In our report 'Security in Occupational Pensions' (May 2010) we stated that "There is generally a higher standard of transparency to the supervisor than to other stakeholders (like sponsors and members); most supervisors also have the power to demand extra information. A large gap can exist between expectations and delivery, partly due to insufficient understanding by members of risks taken on their behalf and their potential consequences.</p> <p>We think the greatest room for improvement is in providing more transparency to stakeholders other than supervisors in how the various components of pension security have been reconciled overall, what this means in terms of the ongoing risks being run on behalf of members, and communication of the potential impact of these risks on members' expectations in a language that they can understand. Whilst some countries are making some progress in this area, we perceive a major need in all countries for better communication and pension education."</p> <p>We are therefore encouraged by Question 23 in the Call for Advice (CfA).</p> <p>We agree with EIOPA that information about pensions should be correct,</p>	
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			<p>understandable and not misleading. Communications to the members should also explain in simple and clear terms the principal risks implicit in the financial arrangements, how they are managed and the potential consequences of failure. Such communication is essential, not just for proper accountability by those charged with taking decisions on behalf of members, but also to make clear to members that the concept of security in IORPs may not be the same as that in other financial products.</p> <p>Better communication about the purchasing power of the benefits is also essential and should, we think, be an important element of disclosure.</p> <p>Transparency should lead to better communication with all stakeholders, not only with members, but also with employers, supervisors, etc. More discussion with stakeholders is not of course a goal in itself, but it should be encouraged in the interests of better security and better understanding of the complexities and risks in IORPs. Amongst other things, such discussions could lead to better alignment of the expectations from various parties about the outcomes and the risks involved.</p> <p>We agree with EIOPA that a new KID-like document should be introduced and should be extended with information on contribution arrangements, practical information and cross-references to other documents. Whilst harmonisation of such communication may have benefits for the member, at an EU-level it would be very difficult to achieve because of the significant differences between IORPs in the different countries.</p> <p>In the interests of transparency about the level of security of pension promises, we consider that it would be appropriate for the HBS to be made public and communicated to stakeholders, especially to plan members (present employees, retired and contingent beneficiaries), so that stakeholders will be able to understand better the nature of the promise being made to members, the financial aspects of the plan sponsor's covenant and the extent of members' dependence on it.</p>	
85.	Groupement Français des Bancassureurs	General comment	The Groupement Français des Bancassureurs (French Bank-Insurers Association)	Noted The point about the

		<p>is composed of the major Insurance subsidiaries of Banks.</p> <p>In life insurance, the latest statistics give us the major market share in France with more than 60 %.</p> <p>(French Banks have almost 40.000 permanent branches selling Insurance) and we contribute significantly to the financing of the economy through our investments.</p> <p>Our aim is to defend the collective interest of Bank-Insurance, to pool the different companies best practices and to insure the development and progress of the Bank-Insurance activities.</p> <p>All our members are also important members of FFSA or GEMA.</p> <p>The French Bank-Insurers Association (hereinafter FBIA) is grateful to the EIOPA for the opportunity given to express our views on the revision of the IORP Directive.</p> <p>As a beginning we would like to state that the goal of the pensions European legislation must be to ensure a sound single market in the European union with a good protection for citizens and with a complete level playing field between providers, in particular between IORPs (subject to the IORP directive) and insurers (currently subject to the life insurance Directive 2002/83/CE and partially to the IORP directive; potentially subject in the future to Solvency II).</p> <p>Solvency rules for IORPs should seek to guarantee a high degree of security for the beneficiaries, who must receive equal protection under risk-based economic rules whilst looking for an adequate prudential regime for long term guarantees, both for IORPs and insurers.</p>	<p>need for a level playing field between the occupational pensions business of insurers and IORPs is noted in the introductory chapter</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p>
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			<p>The aim for the Commission to launch a consultation on the revision of the IORP directive was in the first place to develop the cross border activity and moving towards a supervisory regime funded on a risk based approach.</p> <p>1. Cross border activity</p> <p>For cross-border activity to develop, it is necessary at European level to ensure level playing field within all occupational pension providers. This simple state leads to the following principle: substance must prevail over form.</p> <p>FBIA considers that any institution that offers products for occupational retirement provisions should be regulated not on its legal form, but rather according to product risk profile. The protection of members/beneficiaries should not depend on the legal form of the institution or its prudential supervisory regime.</p> <p>Regarding retirement schemes, we cannot assume that pension funds and occupational retirement provision run by insurance companies have nothing in common. There is a concrete and direct competition between these two pension benefits providing systems, competition that will be more accurate as the cross-border activity will develop.</p> <p>Level playing field between stakeholders therefore implies a consistent prudential approach that might be undermined by the upcoming introduction of Solvency II. Indeed, as pointed out by the EIOPA, institutions that are regulated under Article 4 of the Directive 2003/41/CE will fall under Directive 2009/138/EC. FBIA considers that adequate prudential requirements for both IORP and Solvency II directives should be sought in order to ensure a consistency between stakeholders.</p> <p>According to Article 4, Member States are not allowed to apply Article 17 of the regulatory own funds. Accordingly, Article 4 IORPs activities that, as of today, fall under the Directive 2002/83/EC will be repealed upon the entry into force of Directive 2009/183/EC. FBIA urges the Commission to examine this issue as suggested by EIOPA whilst maintaining the possibility for occupational</p>	
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		<p>retirement provision business of insurance undertakings to be within the scope of the future directive.</p> <p>A transitional solution should be provided by the adoption of the Amendment No. 463 of the Omnibus II Directive:</p> <p>Where, on the date of entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive 2003/41/EC, such home Member States may, until the review of Directive 2003/41/EC is completed, continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to comply with Articles 1 to 19, 27 to 30, 32 to 35 and 37 to 67 of Directive 2002/83/EC as in force on the last date of application of Directive 2002/83/EC.</p> <p>In order to retain a level playing field until the review of the IORP Directive is completed a transitional period for occupational pension provision should be introduced into the Solvency II Directive.</p> <p>2. Risk based approach</p> <p>The second point raised by the Commission is to propose an architecture funded on a risk based approach for the future IORP directive. If we look at the risks, it is to assess an appropriate level of protection for members/beneficiaries. FBIA regrets that EIOPA seems to leave to the Commission the issue of protection of members/beneficiaries.</p> <p>In terms of risk-based regime, Solvency II is a benchmark. If the calibration of Solvency II regarding long-term commitments and in particular pension scheme is not necessarily adequate, the principles of the Framework Directive can be very useful.</p> <p>In our view, the establishment of a risk based approach means that the following principle should prevail: same risk, same rules, same capital ... and</p>	
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			<p>same protection.</p> <p>Consequently, technical rules adopted for pension should be integrated in Solvency II.</p> <p>A future prudential regime built according to these principles must reflect the specificities of each IORP (sponsor covenant, possible reduction of benefits ...) and that is why FBIA supports the development of a holistic balance sheet that will bring greater transparency. In a citizen's protection approach, this holistic balance sheet should be made public.</p>	
86.	PMT-PME-MnServices	General comment	<p>Since the introduction of the IORP directive in 2005 the EU went through two mayor financial crises. The Dutch pension sector was hit considerably, but stood relatively firm, without the provision of any state support (like was the case with banks and insurance companies). Now the Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP directive explicitly underlines this role and responsibilities of individual member states. Furthermore it only refers to article 18 as subject for review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability debate.</p> <p>We are ready and look forward to cooperate with EIOPA and EC in order to further stimulate pension security. At the same time we want to stress that too much focus on capital requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by shift to individual DC). Taking into consideration the importance which the EC highlighted in its green paper on pensions vis a vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the individual member states themselves.</p> <p>But, above all we are convinced that consumer protection is paramount and therefor pension security should be based on full transparency and communication with the pension fund member. This means that we suggest to</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>developing and proposing a set of pension system building blocks to the Member States instead of a set of stringent security rules.</p> <p>Also, we would like to state that we regret that the time for consultation was so short. Even with the postponement of the deadline to the beginning of January, we feel that the time for a proper analysis of over 500 pages has been too short. In addition, we doubt that EIOPA itself will have enough time to properly analyse the answers of the stakeholders given that it has to present its final advice mid-February.</p> <p>Furthermore we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1. Need and purpose for revision:</p> <p><input type="checkbox"/> We would like to start with underlining that we see the point on reviewing the IORP Directive, but we are not convinced that an overall revision of the directive is necessary given our following arguments:</p> <ul style="list-style-type: none"> o One of the reasons put forward by the European Commission to revise the current IORP Directive was the fact that pension schemes might exist that currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission, means that this reason is no longer valid. We will come back to this point in our answers on the scope. o Another major reason to revise the current Directive was the stimulation of cross border activity. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand, rather than stemming from non-harmonised supervision. Also, major differences in social and Labour law and social security (i.e. first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefore conclude that this second reason to revise the IORP Directive is highly disputable . o The only plausible reason remaining for a revision in order to establish risk based supervision is to enhance security of pension arrangements that are currently not covered by any EU regulation. Looking at the scope and the impact of a review, we note that the countries that will be most affected by the review are countries with large funded schemes with defined benefit characteristics. 	
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		<p>The countries where those schemes form a large part of retirement provision do already have a sufficient national safety net.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Based on these three arguments, we conclude that a review and in a later stage an overall revision of the IORP Directive seems to be out of proportion. <input type="checkbox"/> Harmonisation of pensions <ul style="list-style-type: none"> <input type="checkbox"/> Throughout Europe, each Member State has its own unique pension system. Harmonisation of such different systems cannot be achieved in practice. Pensions are about security, adequacy and sustainability. The different features of the different pension systems have to be tested against these three conditions at least. In the Green Paper on pensions these three major aspects of sound pension systems have been correctly identified by the involved Directorates General. A revision of the IORP directive as kicked off by DG Internal Market should take into account the overall pension system of a Member State and address security, adequacy and sustainability.’ Therefore we doubt that a mere revision of the directive without any proposal of how to enhance the setting up of more occupational pension systems in the Member States fails to achieve the aim of the European Commission which is to reduce poverty of the elderly. We seriously put into question that cross-border activities will achieve this aim <input type="checkbox"/> A unique and harmonised security level at the European level is uncalled for, as this is an intrinsic part of the pension deal that is negotiated between social partners at national level. <input type="checkbox"/> We repeat that IORPs differ from insurance companies. They differ from an institutional point of view by the fact that no commercial shareholders exist, but instead carry out collectively bargained pension schemes. Also, IORPs have steering mechanisms (conditional elements) that an insurance company does not have. Typically, liabilities are longer dated allowing for more recovery power and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist.. <input type="checkbox"/> Holistic balance sheet 	
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			<ul style="list-style-type: none"> o The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed. o Consideration can be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool. o The answers in this response are formulated in case the European Commission decides to go through with harmonisation and the introduction of an holistic balance sheet. The fact that specific answers are formulated should not be considered a justification of the review in itself. 	
87.	HM Treasury/Department for Work and Pensions	General comment	<p>We appreciate the opportunity to respond to the consultation, and note the time pressures under which EIOPA have been operating. That said, we have a number of general comments relating to our strong concerns with the proposal to apply Solvency II rules to IORPs, as well as the process through which this is being examined.</p> <p>We have a serious concern with the overall approach to the consultation. The default position throughout the consultation - both at a general level, and at the level of individual details - is that Solvency II should be applied to IORPs unless there are good reasons not to do so. This places the burden of proof on those who do not agree to change. However, legislation should only be introduced, or proposed, where there is a demonstrated need for it. It is not appropriate that legislation is proposed unless a good case can be demonstrated against it – the default must be that no legislation is proposed unless it is demonstrated to be of benefit, and the burden of proof must be on those proposing legislation. Our very strong view is that no good case has been made for new maximum-harmonising solvency rules along the lines of Solvency II, and no evidence has been offered that these proposals will create a net positive benefit for scheme members, employers, or the wider economy.</p>	<p>Noted</p> <p>The point about the need for change to be demonstrated has been recorded in the introductory chapter</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The point about lack of cross-border schemes resulting from lack of demand is recorded in the introductory chapter</p> <p>The importance of</p>

			<p>The rationale for change is described as:</p> <ul style="list-style-type: none"> - creating a level playing field with insurers, on the principle of substance over form; and - facilitating the market in cross-border IORPs <p>Neither of these arguments stand up to scrutiny:</p> <ul style="list-style-type: none"> - Occupational pensions are fundamentally different in substance to apparently similar insurance products, but the approach to the consultation has led to these differences being down-played. One of the fundamental differences – at least with respect to UK schemes – is that unlike insurance products, occupational pension benefits are prescribed by social and labour law. Benefits are therefore not guaranteed in the same way, which means that concepts that are core to Solvency II (such as valuation of liabilities on the basis of their transfer value) are simply not appropriate for IORPs. More generally, the promise is owed not by the IORP but by the sponsoring employer. This means that the relationship between IORP and scheme member is fundamentally different to that between insurer and policy-holder, and there is no comparable relationship between the IORPs and its sponsor in the insurance sector – for example, an insurers’ only option to address a shortfall is to raise capital from external investors, which is entirely different from the IORPs position. Furthermore, IORPs are not-for-profit vehicles operating on behalf of scheme members. They are not trading, and they are not in competition with insurers, so there is no legitimate level playing field issue here. - The consultation acknowledges that the reason for the low level of cross-border trade may be simply a result of lack of demand. However, this is not explored in any detail, and no evidence is provided that any of the measures in the consultation will have any impact on the volume of cross-border trade. 	<p>impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>
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		<p>In any case, neither argument provides a good reason for proposals of such magnitude, that carry such a high risk, and are therefore highly disproportionate to the problems they purport to address.</p> <p>We are particularly concerned with the very high risks and costs of the proposals. The combination of introducing a risk-free discount rate, alongside a new Solvency Capital Requirement, would – if applied on Solvency II basis – increase in the notional capital requirements for UK provision by 30% of GDP or more. However, there is a fundamental lack of detail about how or whether the main mitigant – the sponsor covenant – might be valued, or treated on the balance sheet, meaning that we need to assume a very high increase in the capital that sponsors will need to put into their IORP schemes. This will significantly reduce the capital available for other purposes, with a major knock-on effect on economic growth and employment. Furthermore, as DB schemes are entirely voluntary, this will have the effect of incentivising the closure of existing schemes on a large scale as capital requirements reach the buy-out level. This is the opposite of what the Commission have set out to achieve.</p> <p>We are also profoundly concerned with the lack of any impact assessment other than a very brief note of the potential issues relating to individual measures. It is not possible to determine whether any particular option should be preferred when there is no idea of scale of positive and negative effects. But more importantly, no effort has been made to assess the scale of the impact of the overall package of proposals. A quantitative impact assessment is needed before recommendations are made – not afterwards.</p> <p>Finally, as a general point on process, we are concerned that EIOPA have been given insufficient time to complete this work, and that the consequent lack of an impact assessment and detail on some of the most fundamental aspects of the proposals, necessarily restricts the strength of the conclusions that can be drawn at this stage. EIOPA should therefore make clear to the Commission that</p>	
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			any recommendations at this stage are only tentative, and may be subject change following the outcome of the impact assessment and further work on the feasibility of certain key aspects such as valuation of the sponsor covenant, and that the recommendations cannot be finalised until this work has been completed.	
88.	Hungarian Financial Supervisory Authority (HFSA)	General comment	<p>1. As a general comment the HFSA recommends that the provisions of the Solvency II Directive referred to in the Call for Advice shall not apply to all IORPs. The Call for Advice itself refers to the “material elements” of the Solvency II Directive, and emphasizes the significance of the principle of proportionality. Such principle is mentioned inter alia in points 2.6.7 and 2.8.3 of the Call for Advice. (2.8.3.: EIOPA wishes to highlight the importance of the principle of proportionality, in particular its application to small IORPs, in the whole of its advice.)</p> <p>2. Article 4 of the Solvency II Directive (Exclusion from scope due to size) also contains certain limits for insurance undertakings that fulfil the conditions specified in the Article. One of the conditions is that the total of the undertaking’s technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, does not exceed EUR 25 million.</p> <p>3. According to Article 5 of the IORP Directive with the exception of Article 19, Member States may choose not to apply this Directive, in whole or in part, to any institution located in their territories which operates pension schemes which together have less than 100 members in total.</p> <p>4. There is a gap between the limit specified in the IORP Directive (less than 100 members) and that specified for insurance undertakings. Even the application of the material elements of the Solvency II Directive would mean the application of (some) provisions of the Solvency II Directive that insurance undertakings that fulfil the conditions specified in Article 4 of the Solvency II Directive do not have to apply at all.</p>	Noted

89.	HVB Trust Pensionsfonds AG	General comment	<p>1. The actual quantitative capital requirements for IORPs (plus qualitative requirements for the risk management) are adequately and secure the pension plans sufficiently (for more than 100 years).</p> <p>A requirement that increase the need of capital will reduce the funded way of pension plans.</p>	Noted
90.	IBM Deutschland Pensionskasse VVaG and IBM Deutsch	General comment	<p>The IBM Germany Pensionskasse/Pensionsfonds (PK/PF) welcomes the possibility to comment on EIOPA's response to the Commission's call for advice on revision of the IORP Directive. We urge EIOPA and the European Commission to ensure a robust analysis of the economic impact of any proposals put forward, including the impact on the cost-effective provision of occupational pensions and on growth and job creation.</p>	Noted
91.	ICAEW	General comment	<p>ICAEW welcomes the opportunity to comment on the Call for Advice on the review of Directive 2003/41/EC: second consultation published by EIOPA on 25 October 2011 a copy of which is available from this link.</p> <p>ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.</p> <p>ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.</p>	<p>Noted</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>

			<p>Our response reflects consultation with the ICAEW Pensions Subcommittee of the Business Law Committee, which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.</p> <p>General Comment</p> <p>We query the need for harmonisation of capital requirements in respect of IORPs, as we believe they are fundamentally different from insurers (due to the sponsor support) and in our view there is no need for a 'level playing field' for IORPs across Member States. We also note that Member States with well developed occupational schemes have existing regulatory funding safeguards tailored for pension funds, and we believe the scheme funding measures proposed are disproportionate and will bring little or no benefit, but will have a serious negative impact on current high quality occupational pension provision and economic growth in the UK.</p> <p>We also note that the Solvency II regime has not yet had time to 'bed in', and we believe that regime should be properly assessed before its provisions are extended to other entities.</p> <p>We are also concerned about the process surrounding the development of these proposals, as we believe there should be a proper impact assessment before the Commission can proceed with making any proposals. Such an impact assessment is not possible unless and until more detail is provided in respect of various fundamental aspects of the proposals, such as valuation of the employer covenant and the length of recovery periods. For example, in respect of the 'holistic balance sheet', we believe the principles of measurement for the various components should be set out at Level 1, which should be reflected in</p>	
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			<p>the impact assessment in order for respondents to properly consider the proposals. Without an impact assessment, it is not possible to assess the impact of any proposals in any meaningful way and therefore a proper quantitative impact assessment is critical before any further steps are taken.</p> <p>We also note that a 10 week period (which includes the Christmas period) to develop responses to a 500 page document is very challenging and does not allow sufficient time for proper assessment.</p> <p>This response deals only with questions 12, 16, 33 and 38, which deal with scheme funding.</p>	
92.	IMA (Investment Management Association)	General comment	<p>The IMA is pleased to have the opportunity to respond to the EIOPA consultation on its draft advice to the European Commission on the review of Directive 2003/41/EC (IORP). □ In various capacities, IMA member firms have a significant interest in the future of EU pension provision. They manage assets for the full range of pension schemes and funds operating both in the UK and internationally, including defined benefit (DB) and defined contribution (DC) schemes and national pension reserve funds. Some IMA members also have specific pension company subsidiaries operating bundled (ie. administration and investment platform) DC schemes domestically and abroad.</p> <p>I. GENERAL COMMENTS</p> <p>Before commenting in detail on the questions posed by the document, we would like to make three general comments:</p> <p>1. Absence of methodological detail and impact assessment. It is very difficult</p>	<p>Noted</p> <p>The point about lack of demand and differences in social and labour law being factors in the lack of cross-border schemes is recorded in the introductory chapter</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>to respond in any meaningful sense to one of the central issues of the consultation: new quantitative prudential requirements and the possible role of a holistic balance sheet. We appreciate that EIOPA is itself under timetable pressure from the European Commission. However, a technical consultation with such potentially far-reaching consequences for a number of national pension systems should not be undertaken without providing both a detailed overview of how the holistic balance sheet might operate and an impact assessment.</p> <p>In this context, we would also like to reiterate a broader point about the nature of the exercise that the European Commission has embarked upon. It has always been unclear how a policy process designed to promote cross-border pension provision has failed to identify why there is so little cross-border occupational provision. Indeed, we note that in its first consultation earlier in 2011, EIOPA commented that:</p> <p>“It is possible that the lack of take-up is not due to failings of the Directive or Member States’ interpretations, but to other reasons such as a basic lack of demand. A reason for this lack of demand may be that pension arrangements must operate as part of each Member State’s overall legal systems in respect of occupational pensions - for example taxation and social and labour law - and it is difficult for a foreign IORP to manage this, so they are unattractive to sponsors.” (7.3.13-7.3.14)</p> <p>There are important observations and questions raised here, particularly with respect to taxation, that have not been adequately explored. While we understand the limitations of the current technical consultation, there is a significant evidence gap in the analysis. This should not pass without comment from stakeholders or from EIOPA given its previous remarks.</p>	
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			<p>3. Focus on transparency and consumer information. The IMA welcomes EIOPA's emphasis on transparency and disclosure, particularly as the shift towards DC pension systems accelerates. It believes the idea of an adapted Key Investor Information Document (KIID) within the scope of the IORP directive is an interesting and potentially valuable development, even if a KIID for pensions would be a very different kind of document compared to a KIID in the investment funds space.</p>	
93.	ING Insurance	General comment	<p>ING supports a consistent application of the fundamental principle "same risk - same rules - same capital". Therefore we welcome the review of the IORP directive, that will lead to more transparent and secure pensions for participants across Europe.</p> <p>ING Insurance has a strong position as a global provider of life insurance and retirement services and is very well-positioned to capitalise on socio-economic trends.</p> <p>ING Insurance Benelux, Central & Rest of Europe consists of ING's life insurance and pensions operations in the Netherlands, Belgium, Luxembourg, Poland, the Czech Republic, Slovakia, Hungary, Romania, Greece and Spain as well as greenfield operations in Bulgaria and Turkey.</p>	<p>Noted</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p>
94.	Institute and Faculty of Actuaries (UK)	General comment	<p>1. Our understanding of scope for EIOPA review</p> <p>1.1 We have concerns over the scope of the review. In particular;</p> <ul style="list-style-type: none"> <input type="checkbox"/> The lack of evidence to support the reasons given for the low number of cross border IORPs <input type="checkbox"/> The lack of evidence to support the presumption that harmonisation of the supervision of IORPs and insurance would be beneficial to any stakeholders. <p>However, within this context, we have attempted to offer constructive comment on the proposals, which we hope is helpful to EIOPA.</p> <p>1.2 We note that the reasons for review of current IORP Directive were given as</p>	<p>Noted</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p> <p>The existence of pension protection</p>

		<ul style="list-style-type: none"> <input type="checkbox"/> to propose measures which simplify the setting-up of cross-border IORPs, <input type="checkbox"/> to propose measures that would allow IORPs to benefit from risk-mitigation mechanisms <input type="checkbox"/> to secure modernisation of prudential regulation for IORPs which operate DC IORPs <p>1.3 We note also that the Commission’s aim is to “to attain a level of harmonisation where EU legislation does not need additional requirements at the national level” and that the Commission’s view is that the “...layout of the supervisory system should, to the extent necessary and possible, be compatible with the approach and rule used for the supervision of life assurance”</p> <p>2. Policy Objectives</p> <p>2.1 We believe that there needs to be much greater clarity over the policy objectives that lie behind the Scope that has been set. Underlying the consultation are various assumptions that relate to objectives at both European and Member State level. While these issues are at root political and arguably beyond the scope of the EIOPA consultation, drawing out these issues is important for clarity and to test and challenge assumptions.</p> <p>2.2 Harmonisation of measurement is arguably an attractive objective but this leads to the question: what actions will be taken based on such measurement? If harmonisation is to apply to funding then this arguably is part of social policy which should be considered at a Member State level.</p> <p>2.3 There are different forms of harmonisation, for example between IORPs across countries or between IORPs and insurers. Harmonisation between IORPs for future benefits brings consistency and assists cross-border activity going forward. IORPs have developed in different Member States based on differing social objectives so it is not clear whether past benefits should be harmonised as this may be counter to Member States’ social objectives. This is clearly a political question.</p> <p>2.4 Harmonisation of IORPs with insurance within the UK does not bring</p>	<p>schemes in some member states is recognised in the introductory chapter</p>
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		<p>obvious benefits for consumers, as it is not harmonisation between comparable financial institutions (similarly, banks and insurers are subject to different regulation). In the UK insurance is a purchased financial product, while IORPs provide benefits that are discretionary and are related to the employment contract. In addition, in the UK IORPs and insurance are in the main non-competing financial services and so the need for harmonisation is less clear. (See answers to Q's 36 and 41).</p> <p>2.5 It needs to be clear whether harmonisation is a sufficiently desirable policy objective on its own to justify these changes and costs. At best the harmonisation is partial as unfunded IORPs are omitted from the analysis. In addition, the different types of pension promise in Member States and the variety of security mechanisms in force will make precise harmonisation at a quantitative level extremely difficult to achieve.</p> <p>2.6 A Solvency II measure based on assets committed to an IORP would be likely to show a significant shortfall in the UK. Is the policy intention to increase the capital committed to IORPs and thereby target an increased security level? If so, the capital markets implications of the effective sub-ordination of other providers of capital need to be considered. Our answer to question 21 highlights that adopting the LevelA/LevelB approach is one way to mitigate what could otherwise be the very large macro-economic impacts for the UK (and other countries) of a very large increase in the capital committed to IORPs that some interpretations of this consultation could lead to.</p> <p>2.7 The UK recognises the desirability of benefit security. The UK system has developed to provide a practical balance between cost and security. Increasing regulatory requirements, including increased solvency requirements, would probably act as a further deterrent to voluntary pension provision by employers and lead to more organisations providing statutory minimum pensions. This would ultimately increase the burden on the Member State for pension provision and/or lead to lower overall pensions.</p> <p>2.8 There could be substantial unintended social policy implications if employers further reduce their involvement with IORPs in response to the changes. In particular access to certain types of benefit (i.e. defined benefit</p>	
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		<p>promises) may be further restricted leaving a greater proportion of the population losing the benefits of risk-pooling and becoming exposed to the potentially higher costs of individual arrangements.</p> <p>3. UK Pensions Framework</p> <p>3.1 We feel it would be helpful to EIOPA for us to outline some of the key features of the UK pension environment so as to help them understand the context in which our comments are made. We estimate that over one half of the IORPs potentially affected by the proposals are in the UK and we believe that the UK framework should be explicitly taken into account in the Commission`s thinking.</p> <p>3.2 The UK has a long and relatively successful history of occupational pension provision.</p> <p>3.3 Historically pension provision was used as a positive tool in many individual companies` remuneration strategies. This has led to a large number of IORPs each sponsored by a single employer or single employer group. Even where subsequent M&A activity has brought IORPs under the same sponsoring employer, in many cases the separate IORPs have continued independently. There are very few industry wide IORPs in the UK.</p> <p>3.4 Successive regulatory interventions mean that, for private sector defined benefit IORPs:</p> <ul style="list-style-type: none"> <input type="checkbox"/> full or partial pre-funding is the norm. <input type="checkbox"/> their funding position must be reviewed at least every 3 years <input type="checkbox"/> calculations of the funding position must compare the market value of the IORPs` assets to liabilities calculated on a consistent basis <input type="checkbox"/> where the value of liabilities exceeds assets trustees are expected to agree a recovery plan with the employer and subject to regulatory scrutiny (typically recovery plans must aim to bring assets and liabilities back into line within 10 years) <input type="checkbox"/> a qualified actuary with pensions experience, supported by a framework 	
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		<p>of actuarial guidance, is responsible for the calculations and reports to the trustees</p> <ul style="list-style-type: none"> <input type="checkbox"/> regulations mean that a solvent employer cannot walk away from a pensions promise that has been given even if it turns out to be more expensive than initially expected <input type="checkbox"/> the Pensions Protection Fund gives additional protection to IORP members by taking on the responsibility for paying a substantial proportion of pensions if the IORP has insufficient funds to meet its liabilities and the sponsoring employer is insolvent. <p>3.5 There are also many defined contribution IORPs either written under contract with an insurance company or administered independently under a trust. In either case, an IORP's liability to each member is defined by the backing assets it holds.</p> <p>3.6 From the end of 2012 the UK will start a process of auto enrolling all employees into an IORP of some kind. It is expected that this will further increase the proportion of UK employees in an IORP. Most of these new IORP members will become members of defined contribution IORPs.</p> <p>3.7 Overall the UK already has a risk based approach to assessing solvency that is largely fit for purpose.</p> <p>3.8 In the UK, regulation is subject to the Hampton Principles, which for this purpose means:</p> <ul style="list-style-type: none"> <input type="checkbox"/> regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most <input type="checkbox"/> regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take <input type="checkbox"/> no inspection should take place without a reason <input type="checkbox"/> IORPs should not have to give unnecessary information, nor give the same piece of information twice 	
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		<ul style="list-style-type: none"> <input type="checkbox"/> IORPs that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions <input type="checkbox"/> regulators should provide authoritative, accessible advice easily and cheaply <input type="checkbox"/> regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work <input type="checkbox"/> regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection. <p>3.9 The flexibility of funding regimes has arguably been a historic strength of the UK and a contributor to the large number of funded IORPs that exist in the UK. The more that can be done to encourage the continued existence of these well run IORPs the greater the number of pensioners who will be able to support themselves in retirement and not exclusively rely on state provision.</p> <p>3.10 It is critical that the impact assessment considers the impact of any and all changes on this existing regime for IORPs.</p> <p>4. Funded Schemes versus Unfunded Schemes</p> <p>4.1 It is difficult to understand why EIOPA is being asked to strengthen the regime for funded IORPs as a higher priority than looking at the lower levels of security/certainty members of unfunded schemes have over their benefits.</p> <p>4.2 If taken to the limit an underfunded IORP is an unfunded scheme.</p> <p>4.3 There are also clear parallels between PPF in UK and PSV in Germany whilst these proposals do not seek to position them within similar structures.</p> <p>5. Impact Assessment</p> <p>5.1 A robust and extensive impact assessment should be conducted and used to assess the potential courses of action. It is necessary to know what the potential consequences are arising out of the calculations before embarking on the assessment:</p>	
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		<p>5.2 The impact assessment needs to consider the direct costs of moving to the proposed regime. Our observation on the implementation of Solvency II within the insurance industry is that very significant technically skilled resource has had to be deployed. With the far higher numbers of IORPs involved there could be even greater resource bottle necks and resultant cost pressures.</p> <p>5.3 The Solvency II regime for insurers has yet to come into force and the practical issues are still being addressed. The nature and length of any transitional arrangements will have a material impact on the impact assessment. The very significant efforts that would be required to advise IORPs on such an approach must be recognised, since it is so different to the present approach.</p> <p>5.4 The impact assessment also needs to consider the behavioural consequences of the potential changes that may take place in the years following implementation including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Impacts in the investment markets as IORPs rebalance their portfolios of assets towards risk free investments <input type="checkbox"/> Sponsoring Employer reactions, in particular closing or amending existing IORPs <input type="checkbox"/> Impact of funds that could otherwise be used for member benefits being directed to cover costs of higher governance <input type="checkbox"/> Impacts on wider economies of reduced working capital and investable funds retained within firms if they are required to allocate more capital into pension funds. The assessment should also consider if there is a systemic risk of firms collectively putting more capital into pension funds, having to cut dividends to pay for this, which in turn reduces the value of investments held in the pension funds, thereby forcing firms to put more capital in and so on. <input type="checkbox"/> Increased demand for member advice arising from the increased transfers of pension rights from DB to DC. <p>5.5 Sufficient time should be allowed, and sufficient resource allocated to impact assessments to enable Member States and stakeholders to buy into their</p>	
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		<p>results. There should be a further detailed consultation once the impact assessment is completed and before the Level 1 framework is prepared.</p> <p>5.6 It is important to retain an open mind about what the impact assessment might show, especially as key details are not known; however based on a risk-free (or minimal risk) discount rate the results from the PPF's Purple Book report would indicate a significant shortfall of assets to liabilities (many hundreds of £billions) prior to risk margins or capital requirements being added.</p> <p>5.7 Given the wide number of options consulted on, it may be that an iterative approach involving refinement and reduction of the options in the impact assessment testing is required in order to elicit meaningful information. We highlight in our answer to question 21 how the level A/level B approach might be a way of mitigating the implications for IORP funding and this is an area where greater clarity is needed before a meaningful impact assessment can be performed.</p> <p>5.8 The use of Level 2 measures is required to develop a workable framework. However these measures will probably contain key elements of detail. We would be in favour of a full consultation on Level 2 measures. Crucially the detailed application of the regime needs to be in the hands of national regulators in order to ensure that the objectives lead to the best outcomes for IORP members and other stakeholders.</p> <p>5.9 We would welcome an opportunity to engage with EIOPA in helping to scope the impact assessment test.</p> <p>6. Proportionality</p> <p>6.1 Proportionality is vital bearing in mind the large number of IORPs that are far smaller than insurance companies. By "proportionality" we refer to the size and resources of the IORP (rather than just the complexity of benefits) relative to the cost of implementation.</p> <p>6.2 A lower amount of risk based solvency capital may be appropriate, particularly if there is a national pension protection scheme (for example the Pension Protection Fund in the UK). This will reduce disproportionate</p>	
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			<p>requirements on small IORPs.</p> <p>6.3 IORPs that are closed to new members and/or no longer accruing benefits have less ongoing risk and are in some form of rundown. For example future salary growth is one area of risk that a closed IORP will not be exposed to. There needs to be flexibility in approach to ensure the regime is appropriate for closed IORPs.</p> <p>6.4 A likely consequence of this approach would be a rapid move by those employers still supporting open IORPs/future accrual to stop doing this where they can.</p> <p>6.5 We would like to work with EIOPA to try and develop workable solutions for IORPs of differing sizes and risk.</p>	
95.	Keills Limited	General comment	<p>We are a property fund management business, and have over 60 years of experience of managing property assets for pension fund clients between the senior team.</p> <p>We believe a consequence of the 2003 directive is that Defined Benefit schemes will no longer be able to hold either property or equities as an asset class if the directive is implemented in full. It would appear that the only valid assets will be short dated corporate bonds and sovereign debt. Reducing the type of assets available to back the potential liabilities of pension schemes will increase the risk of the schemes. Witness the trouble experienced in Europe recently - even sovereign debt has risks.</p> <p>Many pension schemes have very long dated liabilities and this longevity is only expected to increase as schemes mature and life expectancy increases.</p> <p>We believe that property as an asset class is very well suited to match the long term liabilities of pension funds. Moreover the cost of providing a pension backed by property is significantly cheaper than the forced buying of index</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

			<p>linked bonds to 'risk match' in terms of the directive. At a time when capital is scarce we do not understand why pension funds are not increasing their allocation to property.</p> <p>As populations increase globally the scarce land resource that they use will become more valuable.</p> <p>Please confirm you have received our objection to the directive.</p>	
97.	KPMG LLP (UK)	General comment	<p>We wish to make the following general comments, which in many ways we view as more important than the detail of some of the specific questions. We make them based on our experience in the UK of advising IORPs and their sponsors (including advising on sponsor covenants), and of auditing IORPs. The comments focus largely on IORPs in the UK.</p> <p>We cannot emphasise enough the importance of impact assessments, before any decisions are taken as to whether any elements of Solvency II should be incorporated into the IORP directive. Many IORPs are starting from a different history and base, and different regulatory backgrounds, to those of insurance companies before Solvency II was put forward. The overall impact of a full or even partial implementation of Solvency II is potentially crippling for IORPs and their sponsors in a number of member states, particularly in the UK.</p> <p>Further, there should be an impact assessment at the macro-economic level for each member state. In the UK in particular, which accounts for some 60% of defined benefit IORP liabilities in the EU, if a regime close to that for Solvency II for insurers were to be mandated it could require a shift of assets of well over £1,000 billion from sponsors to IORPs. At the same time, with much higher funding requirements, IORPs would seek to de-risk their asset portfolios, to</p>	<p>Noted</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>

			<p>avoid even higher and riskier funding requirements. This could involve very significant shifts from equity and debt markets to government bonds, and the potential de-stabilisation of markets.</p> <p>A third part of impact assessment should be the advice costs associated with such change for the large number of IORPs. This should take account of the likely extent of Level 2 rules. We say this cognisant of the very high costs currently being experienced by insurers in their implementations of Solvency II, as well as the availability of a finite actuarial resource to do so.</p> <p>A considered implementation of proportionality (in relation to the size of an IORP) will be vital if any of the proposed new measures are introduced. The present 'cut-off' of 100 members for some aspects of the IORP Directive is too simplistic and low-level a measure. Expressing some of the proposals at a principle-based level only will help to avoid undue costs for many IORPs.</p> <p>The Commission has stated, in its Call for Advice, that "The Commission intends to propose measures that simplify the legal, regulatory and administrative requirements for setting-up cross-border pension schemes." The proposed amendments do not appear to offer much hope of simplification, nor will they in our opinion serve to increase the appetite of employers for cross-border schemes. At least one of the disincentives to establishing cross-border schemes at present is the stronger funding requirement which applies to them, relative to single country schemes. We suggest that evidence-based research is carried out to ascertain if there really is any significant demand for cross-border IORPs, and what employers would require by way of the removal of present requirements before considering them.</p>	
98.	Le cercle des épargnants	General comment		

99.	LTO Nederland	General comment	<p>Comments by the Labour Foundation on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>These comments by the LTO Nederland, the dutch Federation of Agriculture and Horticulture on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, LTO Nedrland refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie]. In the present response LTO Nederland will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <ol style="list-style-type: none"> 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework. 2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended. 	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>
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		<p>elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p> <p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p> <p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people's pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the</p>	
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		<p>case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious</p>	
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		<p>investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p> <p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>LTO Nederland notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p> <p>LTO Nederland is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the</p>	
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		<p>small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p> <p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p>	
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			<p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member 	
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			<p>States, regardless of how they are financed;</p> <ul style="list-style-type: none"> <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. <p>LTO Nederlan will forward a copy of these comments to the EC.</p>	
100.	LV 1871 Pensionsfonds AG	General comment	<p>English summary (more detailed German version below):</p> <p>There is no consideration in the CfA to the notifications process as detailed in Article 20. According to our experience, this process is a major stumbling block for cross-border activities. Our pension fund is located in Liechtenstein, most of the sponsoring undertakings (by now more than 450) are located in Germany. We are operating on the basis of pension plans which provide offerings that have a good deal of standardization. As a consequence, the documents sent to the supervisory authorities as well as those received back from the authorities</p>	<p>Noted</p> <p>The point made about notification requirements being a cause of delay and a possible deterrent to cross-border provision have been recorded in the introductory chapter</p>

			<p>are almost identical in each instance (the only specific information is the address and contact data of the specific sponsoring undertaking). An example of the document that we send to the authorities is sent as an appendix to this mail; the variable information is highlighted in yellow. This notification process delays the start of our service for the sponsoring undertaking for three months in average which by the customers is seen as a major disadvantage. It also has a negative financial impact for the undertaking as the discount for the PSV contribution is applicable only after the notification process is completed, hence the undertaking gets this discount later if it does business with us.</p> <p>There are a number of other issues related to the cross-border business. These have been described in more detail in a paper that we published in a magazine of the Institut für Versicherungswirtschaft of the University St. Gallen, Switzerland. The article is also attached to this mail as a PDF document.</p> <p>A possible solution could be to allow that the notification process can be done per pension plan, i. e. only once. For each sponsoring undertaking which later on joins the pension plan, the IORP will communicate the address and contact data of the sponsoring undertaking, but the service can start immediately, without further delay by waiting for the response from the supervisory authorities involved. This way the supervisory authorities will receive the same information as with the current process, so there is also no reduced safety, neither for the undertakings nor for the members. This change would make the notification process much more efficient for the supervisory authorities as well as for the IORPs.</p> <p>Detailed statement in German:</p>	
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			<p>Notifikationsverfahren nur einmal auf Basis des Pensionsplanes durchzuführen. Anschließend könnte der Pensionsfonds den Aufsichtsbehörden jeweils die Trägerunternehmen mit den oben genannten variablen Daten nennen, wobei dies keine aufschiebende Wirkung auf den Beginn der Tätigkeit des Pensionsfonds mehr haben sollte. Dies würde gegenüber dem derzeitigen Verfahren die Effizienz erhöhen und Nachteile für die Trägerunternehmen vermeiden, wobei die Tätigkeitslandaufsicht dieselben Informationen wie bisher bekäme und auch die Sicherheit für die betroffenen Arbeitnehmer voll gewahrt würde.</p>	
101.	Macfarlanes LLP	General comment	<p>1. Macfarlanes LLP is a firm of lawyers whose clients include companies, business investors and IORP trustee boards. Many of our clients operate in more than one EU member state, and some are non EU companies which invest in and support European businesses and jobs. We share an interest with our clients in the promotion of conditions under which employers can provide pensions for their employees domestically or throughout the EU efficiently and cost effectively, and in the governance and sustainability of employer sponsored pension arrangements. We welcome this review of the IORP Directive and the opportunity to provide input.</p> <p>2. EIOPA rightly points to the political nature of some of the choices which are being considered. We appreciate that these matters are not within EIOPA's remit, and not within the scope of this consultation. However, some of the proposed changes to the Directive are so far reaching that we wish to record our view that the proposed Directive is likely to inhibit rather than to promote the functioning of the single market, fails to advance the policy agenda of the original Directive and is in conflict with wider policy objectives of promoting employer-sponsored pension provision and ensuring the health and growth of European business. We believe the proposals are unnecessary for adequate member protection. Member protection is already dealt with in the current Directive and those (few) Member States which have large numbers of IORPs have significant additional protective mechanisms at national level. The amended Directive will generate substantial additional compliance costs for those businesses and schemes affected. Unnecessary changes and cost deter</p>	Noted

		<p>pension provision by employers, at a time when it is recognised that Members States and individuals may not be able to provide adequate retirement income due to changing demographics. The Directive will not provide common levels of member security under all EU employer sponsored schemes, since many such schemes remain excluded from its application. The proposals fail to recognise the reasons for the lack of growth of cross-border schemes and therefore equally fail to set out a coherent framework which would allow multinationals to organise their pension provision efficiently. In summary the amended Directive:</p> <ul style="list-style-type: none"> <input type="checkbox"/> is likely to deter rather than promote employer-sponsored pension provision within the EU; <input type="checkbox"/> is likely to deter rather than promote cross-border pension arrangements within the EU; <input type="checkbox"/> is not necessary for adequate member protection; <input type="checkbox"/> is likely to damage European business and deter inward investment into the EU; <input type="checkbox"/> is neither appropriate, proportionate nor comprehensive in its regulation of employer-sponsored plans within the EU; and <input type="checkbox"/> is not necessary for and will inhibit rather than facilitate the functioning of the single market. <p>3. Legally, the proposal to create a common regulatory framework for insurance companies (established in order to provide consumer products for profit), and pension schemes (established as a by product of an employer’s business as part of employee reward arrangements), is flawed. Conventional company pension schemes do not compete with insurance companies, and attempting to regulate them in order to provide a level playing field which is unnecessary is itself anti-competitive, interferes with existing legal rights and expectations in a way which cannot be justified and which may be subject to legal challenge in a variety of ways under domestic and EC law. Material changes in legislation which unnecessarily increase costs or business at a time of particular economic difficulty will not be understood by existing and prospective investors within the EU.</p>	
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			<p>4. Under UK company law, the company's objective is the prosperity of its business for the benefit of its shareholders. The principal duty of the company's directors is the promotion of that objective while having regard to a wide range of interests and stakeholders. Employees are one (but only one) of such stakeholders: defined benefit pension members have no special legal status. Their protection comes from the continued health and profitability of the employer's business, the assets separately held in the pension scheme, the insurance protection afforded by the Pension Protection Fund and the strict legal and regulatory protection already afforded under UK law. Regulation appropriate to pension schemes allows these interests to be balanced; regulation appropriate to insurance companies does not.</p> <p>Because the proposals could adversely affect the company's objectives set out in its governing documents and the basis on which investors have committed funds, they amount to a retrospective change in company obligations and effectively re-write the terms on which the pension promises were made. The proposed Directive interferes with private (often long-standing) contracts, negotiated and executed under existing law, and alters members', employers' and shareholders' legitimate rights and expectations without justification.</p> <p>5. Many of the proposed changes to the Directive would cut across established UK law, with its emphasis on trustee decision making within the framework of trust law. Trustees are expected to exercise their own judgment having regard to the particular circumstances taking professional advice where appropriate rather than simply administering prescriptive requirements. There is no justification for interfering with established law when member security and other public policy objectives are already established in domestic law and regulation and existing EU law.</p>	
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103.	Mercer	General comment	<p>Mercer is a leading global provider of consulting, outsourcing and investment services. Mercer works with clients to solve their most complex benefit and human capital issues, designing and helping manage health, retirement and other benefits. It provides benefits, actuarial, investment and governance consulting advice to IORPS throughout the European Union and is a leader in benefit outsourcing. Its investment services include investment consulting and multi-manager investment management.</p> <p>Mercer recognises that there is scope to improve standards of governance and risk management in many IORPs and welcomes the review that is taking place with regard to the IORP Directive. However, we are concerned that the review process might result in undesirable, and perhaps unintended, outcomes. This is for two reasons:</p> <p>First, the objectives behind the review of the IORP Directive and the adoption of Solvency II principles are unclear and short term. Depending on how they are applied, we agree that many of the principles underlying Solvency II could result in stronger risk management and so better outcomes for scheme members, but the consultation document provides no clarity about how EIOPA expects regulation to operate in the proposed new framework. It seems clear that, in some cases, a complete adoption of Solvency II could have severe (negative) financial consequences on many IORPs, their sponsoring employers and members. However, since it is unclear where amendments to Solvency II might be made in the amended IORP Directive and in its implementation, and without an impact assessment of the consequences, it is difficult to be clear about the practical implications of the proposals.</p> <p>If the objective is to introduce a stronger regulatory regime, this might be appropriate in relation to future liabilities. However, some countries have substantial accrued liabilities that could become materially underfunded if Solvency II principles are applied without amendment. This appears to conflict</p>	Noted
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			<p>with member state subsidiarity in relation to social and labour law and could undermine existing arrangements made under company and contract law.</p> <p>Secondly, harmonisation with Solvency II does not seem a legitimate objective for review of the IORP Directive. The implementation of Solvency II has been a difficult and expensive process, resulting in trade offs between different member states and different types of insurance, so that the outcome is not necessarily the best and most transparent or coherent regulatory regime. Like most professions, we expect that regulation is an evolving discipline, so it should be possible to learn from the experience of Solvency II, the existing IORP Directive, and other regulatory models to develop a system that is proportionate and fit for retirement provision in the 21st century.</p> <p>In particular, regulation needs to respect the nature of the underlying contract between the employer and employee, be proportionate to the risks posed at a macro, as well as micro, level and sensitive to the disincentive effects created by imposing too heavy a regulatory burden.</p> <p>Our answers to the specific questions asked in the consultation are appended to this letter. We have also entered them on the web based service provided.</p>	
104.	MHP (Vakcentrale voor Middengroepen en Hoger Perso	General comment	<p>Comments by the MHP on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>These General comments by the Vakcentrale voor Middengroepen en Hoger Personeel [MHP] on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>

		<p>the stakeholders from the Member States. For answers to those questions, the MHP refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie], see answers 1 to 91 for these technical details of the Pensioenfederatie. In the present response, MHP will provide more general comments on EIOPA's Consultation Paper. The main conclusions are:</p> <ol style="list-style-type: none"> 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework. 2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended. 3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States. 4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major 	
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		<p>revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent 'benefit adjustment mechanism' for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p> <p>5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the pension benefits in the Netherlands.</p> <p>6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p> <p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 –</p>	
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		<p>partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p> <p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people’s pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central</p>	
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		<p>Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p> <p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p>	
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		<p>The MHP notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p> <p>The MHP is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results.</p> <p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p>	
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			<p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.</p> <p>The MHP also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, the MHP wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on</p>	
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		<p>the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p> <p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made</p>	
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		<p>at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p> <p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded 	
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			(75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects.	
106.	Ministry of Social Affairs and Health in Finland	General comment	<p>In our comments on EIOPA's response to CfA on the review of Directive 2003/41/EC we have focused on EIOPA's advice on the possibility of extending the scope of the IORP directive. We consider that it is useful to examine the alternative solutions but at the same time one should be very careful not to intervene with the extended scope in the responsibility of Member States to organise their pension systems. We notice that in the OPC report that EIOPA used as its source for the advice, it has not been possible to take into account all pension systems or pension institutions in Member States. We believe that the future proposal for the revised directive will be based on information that will carefully consider all pension systems in each Member State taking into account their differences and characteristics and will take appropriate consideration also on minor pension schemes.</p> <p>It is in everyone's interest that members and beneficiaries of all types of pension schemes should be protected by appropriate regulatory and supervisory standards for the institutions operating pension schemes. It is useful to examine the possibility of bringing the rules concerning supervision and public disclosure under the II and III pillar of Solvency II directive to the IORP directive. If the supervisory and prudential legislation under the revised IORP Directive will be approached from the premise of the Solvency II framework we see that also the scope of application concerning the pension insurance undertakings should in principle be limited similarly as under Solvency II directive. Taking into account a number of small undertakings, e.g. exclusion from scope due to size of an undertaking as under Article 4 of Directive 2009/138/EC would be appropriate.</p>	Noted

			<p>However, there is not yet definitive experience of what kind of effects the Solvency II provisions might have on insurance undertakings. It should also be taken into account that occupational pensions and other insurance products are very different which is why they should be dealt with differently. Given the diverse circumstances in each Member State, we see that an attempt to achieve full level playing field for IORP would be very difficult. The differences in solvency rules are perhaps not the main explanation for small number of cross border activities of IORPs. Considering the principle of proportionality it is evident that the revised directive should not increase the complexity of its application or the administrative burden of the pension funds.</p> <p>In EIOPA's response to CfA on the scope of the IORP directive it was mentioned that the lines between 1st, 2nd and 3rd pillars could be clarified. If there is a need for such clarification in the connection of reviewing the IORP directive, it should only be done after a very thorough preparation in order to find the best scope of application. We see that the current scope of the IORP directive should not be extended. However, if the scope will be redefined, the risk that institutions that administer the statutory pension system would fall under the new scope for the part of the statutory social insurance should be avoided. Pension schemes falling outside the current scope of the IORP directive are most often subject to other national or EU prudential legislation and risk based solvency requirements.</p>	
107.	Montana Capital Partners AG	General comment	<p>Thank you very much for receiving the opportunity to comment on the advice of EIOPA.</p> <p>The proposed advice regarding the Directive 2003/41/EC for pension funds has many similarities to the Solvency II rules. We believe that it is of utmost importance to reflect the substantial differences between insurance companies and pension funds in the regulatory framework and hence would pledge for a differentiated framework that reflects the long-term nature of pension fund investing.</p> <p>Pension funds are typically managed by taking a long-term view, which goes</p>	Noted

			<p>hand in hand with the long-term nature of their liabilities and the payments to their pensioners. Therefore, pension funds should receive the possibility to pursue an investment strategy that matches their long-term horizon and that is also reflected in the risk-weightings of their assets.</p> <p>Due to their nature long-term assets usually generate higher returns than short-term assets as they generate an illiquidity premium, which compensates the holder of the asset for the longer holding period. (refer to the meta-study of the asset class private equity: Diller / Wulff (2011).) Pension funds with liabilities that usually have durations of decades are predestined to generate this excess return for their pensioners.</p> <p>Taking these aspects into account, an application of the Solvency II rules for the pension fund world can be seen as highly problematic as it would destroy value for the European pensioners by giving the wrong incentives to pension funds to invest their assets; which would be not in line with their liability horizon.</p> <p>In this context, it is very problematic if an AAA-rated long-term bond has a higher risk weighting than a BBB-rated bond with a shorter life time. The same holds true for longer-term alternative asset classes such as real estate, infrastructure or private equity, which are penalized in that respect compared to public equities.</p> <p>Hence, we propose to have a more differentiated approach in terms of time horizons, which is based on the different characteristics of the asset classes and which allows for long-term duration matching and an approach which incorporates timing into the liquidity management.</p>	
108.	National Association of Pension Funds (NAPF)	General comment	<p>About the NAPF</p> <p>The National Association of Pension Funds is the UK's leading voice for workplace pensions. Our members operate 1,200 pension schemes. They provide retirement income for nearly 15 million people and have almost €950 billion of assets under management. Our membership also includes over 400 providers of essential advice and services to the pensions sector. This includes accounting firms, solicitors, fund managers, consultants and actuaries.</p>	<p>Noted</p> <p>The point about differences in tax treatment being a disincentive to cross-border provision has been recorded in the introductory chapter</p>

		<p>The NAPF is also a founder member of the European Federation for Retirement Provision (EFRP).</p> <p>NAPF's approach to the IORP Directive review</p> <p>Europe is facing a retirement crisis. People are living longer and the challenges of saving for retirement are becoming more acute. 60 per cent of EU citizens do not have any form of workplace pension provision, and many EU citizens are on a collision course with a poor old age.</p> <p>It is against this background that the NAPF supports the objectives, first set out in the European Commission's July 2010 Green Paper, of improving the security, adequacy and sustainability of the EU's pension systems. We need a pensions environment that supports and encourages good pension saving.</p> <p>Although pensions policy remains a national competence, there are a number of areas where the EU can add value. But these EU interventions should be based on high-level principles, with detailed implementation to be determined by Member States.</p> <p>The areas in which the EU can add value lie particularly in areas such as governance, transparency and communications, and these should be the focus for EIOPA and the EC. Examples would include a number of the measures set out in the draft advice:</p> <p><input type="checkbox"/> proposals to strengthen the governance of defined contribution schemes in order to ensure that members' interests are well protected;</p>	<p>The point on discouragement of equity investment has been noted in the introductory chapter.</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>
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		<ul style="list-style-type: none"> <input type="checkbox"/> proposals to improve communication to members – in both defined contribution and defined benefit schemes; <input type="checkbox"/> proposals to strengthen the Directive with general principles on the supervision of IORPs; and <input type="checkbox"/> use of the Own Risk and Solvency Assessment (ORSA) to improve qualitative assessment of governance standards and procedures. <p>However, the NAPF is very concerned that some of the key proposals in the present review – particularly the new approach to pension scheme funding, would undermine pension provision and damage the economy.</p> <p>Scrutiny of the case for a new Directive</p> <p>With this in mind, EIOPA needs to examine the case for a wholesale review of the IORP Directive very carefully indeed. Most elements of the existing Directive and national pensions legislation work well, so EU policy-makers will need to demonstrate where improvements can be made.</p> <p>The Commission should be challenged to substantiate its assertion that the current form of the IORP Directive is a key barrier to the growth of cross-border pension schemes. Far more rigorous analysis and evidence is required if this point is to be used as justification for new legislation. EIOPA should stress that there are far more significant barriers to cross-border pension provision, such as differences between Member States’ tax regimes.</p>	
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		<p>In any case, EIOPA's own figures show that the number of such schemes is rising - from 78 to 84 in the past year – an 8 per cent increase.</p> <p>EIOPA should also advise the Commission that, if it feels a new IORP Directive is absolutely necessary, then it should cover only Pillar II and Pillar III issues: governance and transparency respectively. It should not cover Pillar I-type funding issues, as this would generate major risks to pension schemes and their sponsoring employers, potentially undermining the security of workers' pension benefits, as explained later in this submission.</p> <p>Subsidiarity</p> <p>Any review of the IORP Directive should respect the Lisbon Treaty's requirements on subsidiarity. Pensions policy remains a Member State competence, except insofar as the Internal Market is concerned. The NAPF would urge EU policy-makers to ensure that measures intended to promote labour mobility across the EU do not disrupt the national-level regulatory systems that have been developed to suit each Member State's pattern of pension provision.</p> <p>Contractionary impact on the economy</p> <p>Although EIOPA has been asked to provide a purely technical response, the NAPF strongly urges all EU policy-makers involved in this review to consider the potential economic impact of a revised IORP Directive. At a time when the EC is engaged on tackling the Eurozone crisis and advancing the 'Europe 2020' growth agenda, it would be unwise to adopt policies that could undermine corporate investment and job creation. □</p> <p>The NAPF's research indicates that a new IORP Directive constructed along the lines envisaged in EIOPA's draft response would have a significant</p>	
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		<p>contractionary impact on the EU economy.</p> <p>The graphics below illustrate the NAPF's concerns about the economic 'transmission mechanisms' which, we fear, would lead to damaging impacts on the EU economy.</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p>Negative impact on sponsor support for IORPs</p> <p>The NAPF shares the EC's objective of safer pension provision. However, the research presented in this submission shows that the 'holistic balance sheet' approach proposed by EIOPA would dramatically increase the cost of providing DB pensions.</p> <p><input type="checkbox"/> Research across a sample of NAPF member pension schemes indicates that just one of the innovations envisaged by the 'holistic balance sheet' – the shift to valuing Technical Provisions on a risk-free basis in order to obtain the 'best estimate of liabilities' – would increase Technical provisions by 27%. <input type="checkbox"/> This would equate to a €337 billion increase in scheme funding requirements.</p> <p><input type="checkbox"/> This very significant increase in funding requirements would have a number of consequences:</p>	
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			<ul style="list-style-type: none"> o The extra funding demands on sponsoring employers would weaken these companies, increasing their insolvency risk and undermining their credit ratings. The 'sponsor covenant' would be weaker. o Sponsoring employers would have less money available for investment and job creation. o In order to match their risk-free liabilities, pension funds would shift investments out of equities and other return-seeking assets and into bonds and other risk-free investments. The result – again – would be less capital available for investment. o Employers would be forced to reduce or cease providing pension benefits to their employees, resulting in less generous benefits for scheme members. We would see a further shift from defined benefit to defined contribution pensions, creating a system in which members have a greater exposure to risks. So a Solvency II-style regime might actually undermine pensions security, as well as reducing adequacy – contrary to the Commission's objectives as set out in the July 2010 Green Paper Towards Adequate, Sustainable and Safe European Pensions Systems. <p>Solvency II-based approach inappropriate for IORPs</p> <p>Although EIOPA has been asked to answer relatively narrow questions about the incorporation of elements of the Solvency II Directive into the IORP Directive, this NAPF submission urges EIOPA to question the EC's assumption that this approach is appropriate for IORPs.</p>	
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		<ul style="list-style-type: none"> <input type="checkbox"/> Pensions are fundamentally different from insurance. Unlike insurance products, pensions are paid over the long term in a relatively predictable manner. So the NAPF does not share EIOPA's view, as in para 2.6.2 of the consultation paper, that 'Differences in approach between the two sectors will need to be justified.' On the contrary, the NAPF argues it is the assumption that the same approach should be employed that should be justified. <input type="checkbox"/> There are very diverse systems and traditions of pension provision across EU Member States. Designing a more harmonised regulatory system would not only be almost impossible, it would also be undesirable and costly. These extra costs would be passed to members. <input type="checkbox"/> Policy-makers should recognise that workplace pension funds have weathered the financial storm well and have proved to be resilient. Security should not be seen as being synonymous only with solvency; governance also has a crucial role to play. <input type="checkbox"/> It would be inappropriate to apply a Solvency II-style regime to pension funds in the UK, where members' benefits are already strongly protected by the employer covenant, by the work of the Pension Regulator and by the Pension Protection Fund. <input type="checkbox"/> Unlike insurance companies, IORPs are run on a not-for-profit basis. <p>Impact assessment</p> <p>This review of the IORP Directive raises complex issues and could have an impact on EU pension provision for many generations to come. It is imperative</p>	
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			<p>that the policy-making process is thorough and carefully considered.</p> <p>The NAPF is very concerned that the review has been allowed to develop to the current, very detailed, level without any accompanying impact assessment. Although EIOPA has now asked the Group Consultatif Actuariel Europeen to contribute to the impact assessment work, it appears that this work will not be concluded until relatively late in the policy-making process.</p> <p>The NAPF would suggest that impact assessment should be an integral part of the policy development process. The assessment should be drafted and expanded alongside advice on the new Directive, so that it can inform high-quality policy-making.</p> <p>EIOPA and the European Commission should also take time to get the detail right. The current – very short – consultation period does not indicate the necessary commitment to a careful consideration of all the issues.</p>	
109.	NEST Corporation	General comment	<p>Please find attached the response from the NEST Corporation (National Employment Savings Trust) to your consultation on Response to Call for Advice on the review of Directive 2003/41/EC: second consultation.</p> <p>NEST Corporation is a non-departmental public body sponsored by the Department for Work and Pensions (DWP) in the UK. It was created on 6 July 2010 as part of the DWP Enabling Retirement Savings Programme, and has been appointed as Trustee of the NEST scheme. This has been set up under statute to be run as if set up under trust.</p> <p>NEST Corporation has a public service obligation to admit to participation any employer who, as part of new employer duties being introduced in the UK from October 2012, chooses to use NEST to provide workplace saving for their</p>	Noted

			<p>workers. We already have a number of employers using the scheme on a voluntary basis before the onset of their legal duties. The NEST Scheme must also accept self employed people who wish to enrol. Our target market is moderate to low earners who have no current pension.</p> <p>NEST is run as a trust based occupational defined contribution pension scheme on a not-for-profit basis. NEST Corporation, as Trustee, sets the strategic direction for NEST and our funds under management are governed by the Trustee in accordance with the NEST order and NEST rules. NEST and NEST Corporation are regulated by the Pensions Regulator.</p> <p>NEST would like to note that in view of the short timescale for this consultation given by EIOPA it was not possible to conduct a comprehensive assessment of the impact of the measures proposed within the timescales given.</p> <p>If you have any further questions about our response or NEST's structure please contact us.</p>	
110.	NORDMETALL, Verband der Metall- und Elektroindustr	General comment	<p>The review of the Directive on Institutions for Occupational Retirement Provision (IORP directive) calls for special prudence, not least against the background that the most recent amendment has been implemented only in the last years by all member states. We would like to point out, that in particular, capital adequacy requirements ("Solvency II") should not be transposed into the IORP directive. Imposition of these requirements would cause great harm to institutions for occupational retirement provision (IORPs) and subscriber companies, and would markedly reduce the readiness of employers to enter into occupational pension commitments. This would run diametrically counter to the need to expand and strengthen occupational pension provision. Incorporation of Solvency II would ignore the risks faced by IORPs in terms of subsidiary employer liability as well as of insolvency cover by the pension protection association (Pensions-Sicherungs-Verein - PSV). In particular the last finance crisis in 2009 showed, that the legal framework of the finance authority stood</p>	<p>Noted</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p>

			<p>the test.</p> <p>The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.</p>	
111.	Pan-European Insurance Forum (PEIF)	General comment	<p>The Pan-European Insurance Forum (PEIF) represents the interests of 12 large multinational insurance companies (AEGON, Allianz, Aviva, AXA, Generali, ING, MAPFRE, Munich Re, RSA Insurance Group, Swiss Re, UNIQA and Zurich Financial Services). PEIF's Chairman is Alex Wynaendts (AEGON) and its Vice-Chairman is Henri de Castries (AXA).</p> <p>PEIF companies are active in the area of pensions whether personal or occupational. The relationship between IORPs and life insurers across Europe varies and is complex. In some cases, life insurers manage or operate IORPs, they also may provide key services to IORPs and in other cases they may compete. Even within individual Member States a variety of forms of interaction is possible.</p> <p>Life insurers are major pension providers and operate in various ways in the occupational pensions sector. Given an appropriate legal framework, they can play an even greater role in bridging the pensions gap. In countries where life insurers and IORPs compete a level playing field is crucial. In other countries, where the interaction is less direct, product transparency which might be on the basis of a well-designed common methodology is important. Indeed, Europe's future pensioners will become increasingly interested in understanding their pension situation.</p> <p>IORP II should contribute to the goal of ensuring that EU citizens have secure,</p>	<p>Noted</p> <p>The point about the need for a level playing field between the occupational pensions business of insurers and IORPs is noted in the introductory chapter</p>

		<p>adequate and affordable pensions. These must be delivered on a sustainable basis. Unless there is empirical evidence that the IORP II project will contribute to achieving this goal, which means having a clear view of the technical options and their impact, then the reservations expressed by many stakeholders will remain.</p> <p>Preparation for IORP II needs to be thorough and with appropriate impact studies. Even after EIOPA responds to the Call for Advice in depth work and assessment will still be required. EIOPA has so far provided high-level input within extremely short time-limits. Given the importance of this review, the next steps demand realistic time-scales and involvement of all stakeholders – including life insurers.</p> <p>European multinational life insurers which are active in this area themselves embody Europe’s pensions’ diversity: EU pension rules impact them in different ways in different countries. The time-frame for the Call for Advice to EIOPA and the two rounds of stakeholder consultation are not sufficient for PEIF as a group of multinational insurers to provide a common set of definitive answers on EIOPA’s questions at this stage. We believe that in some cases a general direction can be given although much else can only be tentative or conditional. In most cases more work will be needed at EU level.</p> <p>This is not only for technical reasons. There is a need to be sure that what emerges will result in a net improvement for beneficiaries and the sustainability of the pension system. Thorough groundwork and assessment are also important for ensuring political legitimacy. It is also worth recollecting that in this context, the emerging Solvency II regime may be a reference point but it is not yet a working model.</p> <p>Pensions are for the long-term. The regulatory framework for pensions providers needs to reflect this characteristic. In consequence, anti-cyclical measures are important for both IORPs and life insurers so that they can support European pension provision for generations to come.</p> <p>Europe’s pensions diversity needs to be taken into account. A well-designed common methodology would be an important tool for identifying and respecting real differences so that the objectives of “same risks, same rules” and “different</p>	
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			<p>risks, different rules” as well as proportionality can be respected. Diversity also raises the legal question of who decides key aspects of work-place pensions, each Member State or the EU. This question needs public discussion and legal analysis. Diversity must be respected but may not be misused to prevent increased transparency between pensions or block the emergence of a single market in pensions. A respect for diversity also means that a politically sensitive and technically individual approach needs to be found for dealing with mandatory DC schemes currently outside the IORP Directive: simply extending its scope is not the answer.</p> <p>EU pension reform must respect four principles:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promote regulatory consistency on the basis of the equality between all pension providers which means fully taking into account relevant similarities and differences (“same risks, same rules” and “different risks, different rules”); <input type="checkbox"/> respect pensions diversity across and within Member States whilst actively supporting the development of a pan-European market in pensions; <input type="checkbox"/> enhance transparency as to differences and similarities between pensions; <input type="checkbox"/> ensure non-disruption not only by fully understanding Europe’s pension diversity but by appropriate transitional arrangements to avoid sudden and unintended consequences to existing pensions arrangements involving IORPs as well as for life insurers (e.g. currently relevant for Article 4 providers who are facing a level playing field issue but also for insurers otherwise acting in the occupational sector). <p>Only a workable common methodology that is well-designed will ensure these principles will be effective. EIOPA’s holistic approach could form a key element of this.</p>	
112.	Pensioenfonds Zorg en Welzijn (PFZW)	General comment	Pensioenfonds Zorg en Welzijn (hereafter: PFZW) is the not-for-profit mandatory pension fund for the Dutch health care and welfare sector. We manage the pensions for more than 2.3 million participants. Our assets under	Noted The point about the interaction with first

		<p>management contribute to 99.5 billion euro (end of 2010).</p> <p>PFZW has contracted PGGM to administer its pension scheme and manage the assets of the pension fund. PFZW was also assisted by its services provider PGGM in answering the questions of this response.</p> <p>For further information on PFZW and its pension services provider PGGM: PFZW : http://www.pfzw.nl/about_us/Corporate_information/Corporate_information.asp PGGM : http://www.pggm.nl/About_PGGM/Corporate_information/Corporate_information.asp</p> <p>PFZW is a member of the Pensioenfederatie, the Dutch federation of pension funds. PFZW has been actively involved in the drafting of the response of the Pensioenfederatie. We endorse the response sent to you by the Pensioenfederatie and therefore our response will show considerable similarities.</p> <p>Preliminary Remarks</p> <p>Since the adoption of the IORP Directive (Directive 2003/41/EC) in 2003, the European Union went through two major financial crises. The Dutch pension sector was hit considerably but stood relatively firm. Dutch pension funds did not seek for state support, unlike some Dutch banks and insurance companies. Nowadays, Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP Directive explicitly underlines the role and responsibilities of individual Member States. Furthermore, the IORP Directive only refers to article 18 as being subject to review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability</p>	<p>pillar pensions has been recorded in the introductory chapter</p>
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		<p>debate.</p> <p>We are ready and look forward to cooperating with EIOPA and the European Commission to further stimulate pension security. At the same time we want to stress that too much focus on capital requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by a shift to individual Defined Contribution contracts). Taking into consideration the importance which the European Commission highlighted in its Green Paper on Pensions vis-a-vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the individual member states themselves.</p> <p>Above all we are convinced that consumer protection is paramount and therefore pension security should be based on full transparency and appropriate communication with pension fund members. We suggest to develop and propose a set of pension system building blocks to individual Member States, instead of introducing a set of stringent security rules. Therefore we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1.</p> <p>Last but not least, we would like to reflect on the need and purpose for the foreseen revision:</p> <ul style="list-style-type: none"> <input type="checkbox"/> We would like to start with underlining that we see the point in reviewing the IORP Directive. At the same time, we are not convinced that an overall revision of the IORP Directive is necessary given the following: <ul style="list-style-type: none"> <input type="checkbox"/> One of the reasons put forward by the European Commission to revise the current IORP Directive is the fact that there might exist pension schemes which currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission implies that this reason is no longer valid. We will touch 	
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		<p>upon this issue in our answers on the scope.</p> <ul style="list-style-type: none"> o Another driver for revising the current IORP Directive is a wish for further stimulation of cross border activity, or at least to prevent barriers to occur. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand rather than a result from non-harmonised supervision. Also, major differences in social and labour law and social security (i.e. first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefor conclude that this second reason to revise the IORP Directive is highly disputable. o The only plausible reason remaining for a revision in order to establish risk based supervision is to enhance security of pension arrangements that are currently not covered by any EU regulation. Looking at the scope and the impact of a review we note that the countries that will be most affected by the review are countries with large funded pension schemes with Defined Benefit characteristics. The countries where those schemes form a large part of retirement provision do already have a sufficient national safety net. <input type="checkbox"/> Based on these three arguments, we conclude that a broad review and, especially, an overall revision of the IORP Directive seems to be disproportionate. <input type="checkbox"/> Harmonisation of pensions: <ul style="list-style-type: none"> o Throughout Europe, Member States have their own unique pension systems. Harmonisation of such different systems cannot be achieved in practice. Pensions are about security, adequacy and sustainability. The different features of the different pension systems have to be tested against these three conditions at least. In the Green Paper on Pensions these three major aspects of sound pension systems have been correctly identified by the involved Directorates General. A revision of the IORP Directive as initiated by DG MARKT should take into account the overall pension system of a Member State and address security, adequacy and sustainability.’ Therefore PFZW doubts whether a mere revision of the IORP Directive without any proposal on how to enhance the setting up of more occupational pension systems in the Member States fails to achieve the aim of the European Commission which is to reduce poverty of 	
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			<p>the elderly. We seriously question whether cross-border activities will achieve this aim.</p> <ul style="list-style-type: none"> o A unique and harmonised security level at the European level is uncalled for, as this is an intrinsic part of the pension deal that is negotiated between social partners at national level. o We repeat that IORPs differ from insurance companies. They differ from an institutional point of view by the fact that no commercial shareholders exist. Instead, IORPs carry out collectively bargained pension schemes. Also, IORPs have steering mechanisms (conditional elements) that insurance companies lack. Typically, liabilities are long term allowing for more recovery power and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist. <input type="checkbox"/> Holistic balance sheet: <ul style="list-style-type: none"> o The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed. o Consideration can be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool. o The answers in this response are formulated in case the European Commission decides to go through with harmonisation and the introduction of an holistic balance sheet. The fact that specific answers are formulated should not be considered a justification of the review in itself. 	
113.	Pensions Sicherungs-Verein aG (PSVaG), Köln.	General comment	<p>General comment:</p> <p>The Pensions-Sicherungs-Verein VVaG ("PSVaG") is the institution which was given the legal task to fulfil pension promises in case of the insolvency of employers in Germany and Luxemburg. For such institutions are addressed in the draft response to the call for advice the PSVaG feels obliged to take the</p>	<p>Noted</p> <p>The existence of pension protection schemes in some member states is</p>

		<p>opportunity of public consultation. In the following we want to present the German system of occupational pension provision in short and the part the PSVaG plays within this system. With regard to the specific questions raised by EIOPA we limit our response to those questions directly linked to the task of the PSVaG.</p> <p>In Germany, one of the major national economies in the EU, the corporate pension (or occupational retirement provision) system, the second pillar of old-age security, plays an especially important role for working people. A fully functional insolvency insurance programme is an essential prerequisite and must fulfil two criteria:</p> <ol style="list-style-type: none"> 1. It must ensure complete security for the old-age pensions of employees and retirees as long as they are in force and 2. motivate employers to strengthen this pillar of old-age security. <p>Pension protection in Germany:</p> <p>Therefore, a proven dual protection system has been developed in Germany.</p> <ol style="list-style-type: none"> 1. Subsidiary liability of the employer, who provides the primary level of pension security. In the event that the institutional pension scheme is partially or fully unable to provide the assured benefits, the employer is obliged to contribute to the extent necessary to honour benefit entitlements. 2. Should the employer become insolvent and no longer able to meet his obligations due to partial or total insolvency, the PSVaG assumes responsibility for insuring pension entitlements. <p>The PSVaG:</p> <p>This pension protection institution was founded in 1974 as a mutual insurance association. Its legal basis is the Gesetz zur Verbesserung der betrieblichen</p>	
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		<p>Altersversorgung (Corporate Old-Age Security Improvement Act, BetrAVG). The PSVaG now has more than 90,000 members (employers) representing a great part of the whole German economy.</p> <p>Over 10 million employees and retirees are currently insured. The PSVaG usually provides protection for all benefits accrued at the date of insolvency up to a certain amount (at the moment about 90,000 euros a year) which should cover 100 % of promises made by employers or by IORPs.</p> <p>This protection system has proven effective. Since 1974, over 1.2 million individuals have received pensions from the PSVaG or have lodged valid claims for pension entitlements with the PSVaG.</p> <p>How the PSVaG is funded:</p> <p>The PSVaG is funded by contributions from member organizations on the basis of an allocation system linked to the volume of annual claims. Since foundation the average allocated contribution of 0.31 percent of total insured pension volume is very moderate. The contributions are not limited which is why the level of security for the covered pension promises provided by the PSVaG should be 100 %.</p> <p>Cross-border activity of PSVaG</p> <p>This system has also been successfully installed in Luxembourg since 2001 and thus has cross-border impact. This offers additional advantages, such as a broader employer base and thus a broader distribution of mandatory contributions. It fulfils a social-security function in the form of cross-border pension protection.</p> <p>Stability of the PSVaG</p> <p>Due to the legal status of the PSVaG as a mutual insurance association as well as supporting statutory regulations, including in particular those contained in</p>	
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			<p>the Corporate Old-Age Security Improvement Act (BetrAVG), the risk of instability for the PSVaG as a self-help facility for the business community comprising more than 90,000 employers in Germany and Luxembourg is effectively ruled out.</p> <p>Social service</p> <p>The most important social service provided by the system is the guarantee that all employees affected by employer insolvency are assured of receiving the non-forfeitable pension benefits to which they are entitled as of the effective date of insolvency up to a maximum monthly amount of 7,845 EURO (in 2012) from the PSVaG. Retirees are assured of receiving their benefits without interruption.</p> <p>Participation in the system is mandatory for corporate enterprises which offer corporate pensions through direct benefit assurances or through pension funds or pension relief funds. This insurance also covers employee entitlements to deferred compensation.</p> <p>In this way, the PSVaG provides full coverage for the subsidiary liability of employers, regardless of the extent to which a given employer is exposed to the risk of insolvency and regardless of an employer's business sector affiliation or size.</p>	
114.	Predica	General comment	<p>Predica is a major life insurance company in France, subsidiary of Crédit Agricole Assurances, the Crédit Agricole holding company for insurance: Predica is the second life insurer in France in terms of premiums and mathematical provisions.</p> <p>Predica considers that regulation should ensure the same consumers protection in Europe and a fair competition among companies. That is the reason why</p>	<p>Noted</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p>

			<p>Predica appreciates the consultation on the revision of the IORP directive, considering that occupational pension providers should have the same regulatory frame, without any distortion linked to their legal form or to their registration country.</p> <p>The products offered by different occupational pension providers such as pension funds or long-term life insurance companies are similar but the regulatory environment in which they operate is quite different: this issue is especially accurate in case of cross border activities either operated through right of establishment or freedom to provide services. This could allow unfair competition, and encourage business transfers to countries according to their regulation.</p> <p>In our view, the first level of consumers' protection is to ensure the solvency of the occupational pension providers : that is why we suggest that the Solvency II approach (in terms of solvency requirements and internal control) could be taken as a general starting point, even if adjustments (applied to IORP's regulation or to Solvency II) may be necessary so that the same risks are supervised with the same rules.</p> <p>These considerations have prevailed in answering this consultation which was established in connection with Fédération Française des Sociétés d'Assurance (FFSA) and Groupement Français des Bancassureurs (French Bank-Insurers Association - FBIA).</p>	
115.	PricewaterhouseCoopers LLP	General comment	<p>This is a very important call for advice having potentially far reaching implications; we therefore welcome the opportunity to contribute to the debate. We comment below only on one fundamental point which we feel is critical to <u>simultaneously furthering the objectives of the European Commission and also</u></p>	Noted

		<p>to protecting the commercial interests of our clients.</p> <p>The call for advice from the European Commission dated 30 March 2011 states that “The aim of the directive is to create an internal market for occupational retirement provision organised on a European scale.” However, experience since 2003 has been that very few cross border IORPs have so far been established.</p> <p>In our view a significant reason for this is the requirement that falls on a cross border IORP to be fully funded at all times. This continues to be a significant impediment to the establishment of any cross border IORPs containing defined benefit liabilities.</p> <p>As noted in paragraph 10.3.190 of the second consultation, EIOPA accepts that a recovery period of 15 years might be acceptable for non cross border IORPs. If the European Commission wishes to promote the development of cross border IORPs we suggest that the same reasoning be applied to them as for non-cross border IORPs.</p> <p>This is important given the suggestion that the definition of “cross border” be harmonised in a way that is likely to classify some local pension schemes purely for staff in that country as cross border IORPs. It is difficult to understand the logic for not extending the same treatment of recovery periods to the two categories.</p> <p>In fact, although focus has not yet been strongly on this point we feel that is solely because of a desire to register opposition to the principles in total. At the next stage of considering Level 2 details it should be expected that this issue will come into central view.</p>	
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			<p>Making the change now, so that the change of status of a single country IORP to cross border IORP will not introduce a severe penalty, would be seen as a positive move by the European Commission and would help to remove a very significant barrier to the development of DB cross border IORPs, thus furthering the European Commission's objective.</p> <p>There are many other aspects of the consultation on which we have views and we would be delighted to share these with EIOPA (either by correspondence or by meeting if required) but at this stage do not want to obscure the centrality of the above issue.</p>	
116.	prof.dr. A.A.J. Pelsser HonFIA, Netspar & Maastric	General comment	1.	
117.	PTK (Sweden)	General comment	<p>The Council for Negotiation and Co-operation (PTK) is a joint organization of 26 affiliated unions, representing 700 000 salaried employees in the private sector in Sweden.</p> <p>Occupational pensions and labor market insurance established through collective agreements between the social partners have a long tradition in Sweden and constitutes an important complement to the state security system. The Swedish labor market is mainly regulated by collective agreements, while legislation gives the framework for negotiations by regulating how social partners should respond to each other and to resolve disputes through negotiations.</p> <p>As for occupational pensions and injury insurance almost 90% of the officials in the private sector are covered by insurance, based on collective labor agreements to which PTK is a party. PTK's main assignment is to negotiate, monitor and manage collective agreements with regard to pensions and insurance, particularly in connection with the ITP agreement, (on supplementary</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

		<p>pension plan for salaried employees in the private sector), and the TGL agreement, (on group life insurance), but also agreements on transition and work environment matters related to the TFA agreement, (on work injury insurance). All of PTK's tasks come from its affiliates.</p> <p>The opportunity to respond to the Call for Advice on the review of Directive 2003/41/EC: second consultation is welcomed by PTK.</p> <p>PTK fully supports the EU objective to achieve sustainable, safe and adequate pensions and to make citizens aware of the importance of pensions. PTK is also supportive of the approach in the Call for Advice; that supervisory regulation, as a starting point, should be risk based.</p> <p>PTK is however very concerned that the risk based approach, when extended to embrace also capital requirements with focus on pension security and scheme funding levels, could have detrimental effects on existing occupational pension systems. Applying to IORPs the same Solvency Capital Requirements as foreseen in the Solvency II directive, would most likely result in an increase in their required assets. This in turn would most likely lead to lesser risk taking and to lower benefits , which constitutes an inherent risk itself. When investment portfolios are forced to shift pension fund investments out of equity and into fixed interest investments, future returns are threatened and thereby risking future pension payments. PTK opposes therefore also the proposed holistic balance sheet approach.</p> <p>As national pensions and pension systems are inextricably connected to national social and labor laws, tax regulations and traditions in the member states, it is utterly important that any assessment of occupational pension regulations on the EU-level recognize the diversity of national conditions and the functioning of existing pension systems across the member states. Amendments in the European legislation may have detrimental effects on both the goals of the EU and on existing pension systems in the member states, systems that have proven to work well also during the financial crisis.</p> <p>Given the diversity of pension systems in the member states and the different legal and social environments in which they exists, adding the probable negative impacts a revision of the IORP-directive could have, PTK suggests that;</p>	
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			<ul style="list-style-type: none"> - A thorough impact assessment should be carried out before any legislative proposals related to the IORP-directive are made, and, - A revision of the IORP directive should be linked to other EU related initiatives, such as the White Paper on Pensions and issues related to employment, growth and social progress as expressed in the Europe 2020 strategy. 	
118.	Punter Southall Limited	General comment	<p>This is Punter Southall’s response to the consultation paper. Punter Southall provides a full range of actuarial advice, pensions consultancy and pensions administration services. Our clients come from a broad spectrum of UK businesses, charities, unions and institutions. Pension scheme clients range in size from 20 members to over 10,000 members, from owner-managed businesses to industry-wide schemes.</p> <p>Given the length of the consultation and the comparatively short timescale in which to make a response, we have had to restrict our response to a few comments on what we consider to be the most important areas of the consultation.</p> <p>Our fundamental point is that we do not agree that Solvency II, a solvency regime designed for insurance companies, should be adapted to apply to IORPS. Introducing a Solvency II style regime is highly likely to have severe and disproportionate consequences for defined benefit pension schemes, their sponsoring employers and the wider economy.</p> <p>Pensions are different from insurance – the regulatory regime should reflect this</p> <p>The terms of reference for the current consultation appear to be a step ahead of themselves as EIOPA has been asked to consider how to adapt Solvency II for pensions and not whether this is appropriate in the first place.</p> <p>We note that EIOPA’s draft response to the European Commission accepts that there are ‘important differences between IORPS ... and insurers’ (2.6.4). We agree with this view. It is very hard to see how IORPs and insurance companies can be viewed as being in competition with each other, given that IORPS are</p>	<p>Noted</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

		<p>associated with an employer and employees are typically only offered the option of joining an employer’s pension scheme (or not).</p> <p>In our view, IORPS should be regulated by bespoke regulation tailored to their particular situation, not forced into an ill-fitting framework designed for a completely different sort of institution.</p> <p>The proposed holistic balance sheet attempts to make the Solvency II framework fit IORPs better, by allowing for the valuation of additional forms of security which are unique to IORPs, such as sponsor covenant and pension protection schemes. It is certainly true that such security mechanisms are a fundamental part of the risk-mitigation framework that applies to IORPs. The holistic balance sheet does not, however, address the fundamental inappropriateness of starting from a framework designed with a completely different type of financial vehicle in mind.</p> <p>Introducing Solvency II would have severe consequences for UK DB schemes</p> <p>Punter Southall carried out research a few years ago (December 2007) that suggested increasing technical provisions for the UK FTSE350 to Solvency II levels (taking account of both a switch to a risk-free discount rate and the introduction of a solvency capital requirement) could lead to an increase in funding of 85-90% compared to technical provisions on the scheme specific funding basis. Although things have moved on since then, particularly in terms of market conditions, this figure suggests that the potential impact on defined benefit schemes would be enormous. It is not implausible to suggest that it would result in the widespread closure of defined benefit schemes to new entrants/future accrual, if this has not already happened.</p> <p>We also note with some dismay that EIOPA propose to provide advice to the EC before carrying out a quantitative impact assessment. This is a clear-cut case of putting the policy advice cart before the impact assessment horse.</p> <p>A move to a solvency-style regime is also likely to impact on pension scheme asset allocation, with schemes increasingly reluctant to invest in return-seeking assets such as equities, property and corporate debt in preference to sovereign debt. This could have serious effects on the wider economy, which could be</p>	
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		<p>particularly unwelcome at a time when the markets are already suffering sustained and damaging effects from the EU sovereign debt crisis.</p> <p>European Commission's aims for pensions</p> <p>According to its Green Paper for Pensions, the EC's goals for pensions are adequacy, sustainability and safety. Whilst introducing Solvency II for pensions would increase the security of some IORPS, it could be at a considerable cost for defined benefit pension schemes (and their members) as mentioned above. Sponsors would be likely to close defined benefit schemes. If the replacement schemes are comparatively poorly resourced defined contribution schemes, where the member runs all the risks, it is hard to see how this can be squared with the goals of adequacy and sustainability.</p> <p>It is also difficult to see why introducing Solvency II for IORPS would increase take-up of cross-border schemes. Increasing funding requirements for defined benefit IORPs would be likely to reduce take-up not increase it. We suggest that the EC would be better advised to investigate other reasons as to why there are so few cross-border schemes, such as a possible lack of demand.</p> <p>Level A and Level B technical provisions</p> <p>Although we fundamentally disagree with the introduction of Solvency II for IORPS, if EIOPA decide to recommend the holistic balance sheet regardless, we strongly urge them to consider adopting the alternative valuation approach with two levels of technical provisions (level A and level B) where 'Level B technical provisions', calculated using an interest rate based on expected asset returns, are used as the basis for the funding of IORPS, whereas Level A technical provisions are calculated solely for the purpose of disclosure to members and supervisors.</p> <p>Summary</p> <p>To conclude, we fundamentally disagree with the basic premise of this consultation that a regulatory regime based on Solvency II should be imposed on IORPS. We strongly urge EIOPA (and the EC) to reconsider their stance on this point.</p>	
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119.	Railways Pension Trustee Company Limited ("RPTCL)	General comment	<p>As background information to our response, Railways Pension Trustee Company Limited (RPTCL) is the Trustee of four private sector pension schemes serving employees, pensioners and employers involved in the UK railways industry. In total, these schemes have around 350,000 members, including around 85,000 active members who are accruing defined benefits. Over 150 private sector employers, including a number with non-UK parent companies based elsewhere in Europe, are involved in sponsoring RPTCL's schemes, as are also the UK's Department for Transport and the British Transport Police Authority.</p> <p>The majority of RPTCL's pension schemes are shared cost arrangements with 40% of total contributions, including those required to meet any shortfall of assets relative to technical provisions, being met by contributing members to the schemes. There are around 85,000 such members and RPTCL has concerns that amendments to technical provisions or recovery periods may have a very significant and adverse financial impact on these people.</p> <p>As well as the concerns relating to the questions where responses have been provided below, RPTCL is concerned that the consultation period to respond to this Call for Advice has been too short for pension schemes affected by the proposals to properly consider and formulate a considered reply to the 96 questions. It is expected that the proposals would have a significant impact on pension provision and require a full impact assessment by the EU and each Member State. Therefore, they proposals warrant considerable further analysis and consultation, preferably taking into account the experience of the implementation of Solvency II for insurers.</p>	Noted
120.	Reed Elsevier Group plc	General comment	<p>The proposed changes to the measurement of solvency of occupational pension schemes under "Solvency II" raise the following issues.</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>

			<ol style="list-style-type: none"> 1. The impact on finances of scheme sponsors and hence on investment and employment prospects 2. The impact on bond markets and potential repercussions. 3. Previous unintended consequences of changes to occupational pension legislation. 4. Lack of consistency with unfunded schemes. <p>Impact on finances of scheme sponsors and on investment and employment prospects</p> <p>The change to the discount rate used to calculate the technical reserves of the UK Pension Scheme to the returns available on "risk free" assets, namely UK Government index linked gilts, would increase the size of the UK scheme's technical reserves by more than 50%. There would also be an increase in the cost of accruing benefits. This would lead to a substantial increase, in excess of 50%, in funding costs to the UK sponsoring companies and there would be two likely results.</p> <p>Firstly the UK sponsoring companies would almost certainly consider the additional funding cost unacceptably high and be forced to close the scheme to future accruals. There have already been many changes to UK pension scheme accrual rates and design as a result of the higher cost of providing pensions benefits due to the low level of yields available and improving longevity. Replacement schemes tend to be of the defined contribution type which transfer investment risk to the employee.</p> <p>Secondly the sponsor would have to divert considerable resources to make up the deficit even assuming an extended implementation period for the recovery</p>	
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		<p>1. Lower yields on risk free assets lowering discount rates.</p> <p>Firstly, lower gilt yields as a result of pension funds switching into risk free assets will increase the valuation of the liabilities in the technical reserves. Although pension schemes are not required to hold matching assets some may feel required to hold such assets to reduce the risk of further declines in interest rates resulting in rising costs. In this way falling yields actually increase the demand for government bonds. We can see some evidence for this in UK government debt markets where pension funds have increased holdings as prices have risen.</p> <p>It might be thought that these changes would occur over time given an extended period before full implementation of the terms of solvency II. However even if there were to be a 15 year implementation period many schemes would consider early matching to be prudent, especially if yields were falling as seems likely.</p> <p>2. Distorted asset values.</p> <p>The second problem relates to the distorting effects that excessively low gilt yields can have on both investors and the economy. We have seen over the past decade that when interest rates have been too low, risk has often been underestimated by investors seeking a higher yield and capital has been allocated unwisely. In extremis, poorly allocated capital can destabilise economies. The global economy is still recovering from the poor allocation of capital in recent years.</p> <p>At the same time the rapid selling of equities and corporate debt to reinvest in risk free securities would impact share prices and corporate bond yields and would potentially be devastating for companies and the economy. It would also depress the market value of pension fund assets. Thus the distortion of asset prices as a result of predictable changes in asset allocation by pension schemes</p>	
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		<p>could increase the risks facing pension schemes, rather than reduce them. This is contrary to the aims of this proposal.</p> <p>Previous unintended consequences of changes to occupational pension legislation</p> <p>The UK government has previously made attempts to improve the security of pension arrangements and these have had the unintended consequence of reducing occupational pension fund provision in the UK. The Pensions Act 2004 (c. 35) allowed for the introduction of Occupational Pension Schemes (Employer Debt) Regulations 2005 under which the liabilities of UK occupational pension schemes were no longer to be funded on a “best efforts” basis but became a legal liability of the company. As a result many companies reduced the risk of a pension scheme funding shortfall by buying government bonds and selling equities. The projected cost of providing pension to employees rose and a great many schemes closed to new members and some to future accrual.</p> <p>There are striking similarities between the attempt to improve the security of pension benefits under the Pension Act 2004 and the proposed Solvency II directive. The latter will in all likelihood result in pension schemes reducing their exposure to equities and increasing their bond holdings. The substantial increase in cost of providing pension benefits will lead to the closing of many schemes to new members and future accrual. In all likelihood overall occupational pension provision will decline substantially leaving a great many current and future employees in a worse position in their retirement.</p> <p>In summary, we believe that the limited additional security provide by these proposed regulations is more than offset by the additional cost to employers, which will affect competitiveness and future unemployment levels, and the</p>	
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			<p>direct detriment to active members of pension schemes, who will find themselves no longer accruing pension benefits.</p> <p>Lack of consistency with unfunded schemes</p> <p>Pension funds established under laws of trust were launched during the early 20th century in order to provide security to employees that their pensions would be backed by a fund separate from the sponsoring company. Funded pension schemes were seen as more secure than unfunded liabilities and most of the legislation in the UK has been aimed at improving that security. The proposed Solvency II legislation is a further attempt to improve the security of funded occupational pension schemes. If enacted as proposed the disparity between the security of funded and unfunded schemes would become even larger and we question whether attention might be better given to unfunded arrangements.</p>	
121.	Rio Tinto plc	General comment	<p>1. Rio Tinto is a leading international mining group, combining Rio Tinto plc, a London listed public company headquartered in the UK, and Rio Tinto Limited, which is listed on the Australian Stock Exchange, with executive offices in Melbourne. The two companies are joined in a dual listed companies (DLC) structure as a single economic entity, called the Rio Tinto Group.</p> <p>Rio Tinto sponsors a number of pension plans in the European Union with defined benefit assets of approximately €3 billion. The largest plans are in the UK.</p> <p>The principal point that we wish to communicate in this response is that we believe that the application of a Solvency II type regime to occupation pension plans is fundamentally flawed. Pension plans are offered by employers, generally on a voluntary basis, as part of the employment contract. They are therefore a part of the social and labour environment in which companies operate, with significant differences existing from one country to another. This is very different from the circumstances applying to insurance products, which</p>	Noted

			<p>are financial products generally purchased voluntarily by individuals or companies. In our view the consultation should first of all address the question of whether the application of Solvency II to pension plans is appropriate, whereas in fact the consultation appears to leap straight to the question of how to apply Solvency II to pensions.</p> <p>We believe that the application of a Solvency II approach to pensions could have a number of detrimental effects, including some which are contrary to the Commission's stated aims. Applying Solvency II funding requirements to pension plans would discourage employers from offering defined benefit pension arrangements. Furthermore, applying certain elements of the regime to defined contribution plans would also discourage employers from offering those arrangements. The end result would be a reduction of employer-sponsored retirement provision.</p> <p>We also believe that introducing additional regulation would not encourage the use of cross-border plans. In our view the primary reason for the relatively small number of cross-border plans is that the existing regulation is already too complex; further regulation will not encourage the use of cross-border plans.</p> <p>We are also extremely concerned about the potential financial impact of a Solvency II regime on pension plan sponsors. Our own calculations suggest that applying Solvency II to our pension plans would result in deficits of at least 250% of the current deficits (based on our technical provisions basis). This alone represents a very significant amount of cash. If higher funding requirements were combined with shorter deficit recovery periods then the impact would be even more significant. Our view is that the application of Solvency II to pensions would result in companies being forced to reduce their investments in projects that result in growth and employment.</p>	
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			<p>The proposed “holistic balance sheet” approach will require companies and pension institutions to obtain expensive advice. We believe that the Commission should aim to quantify the additional cost burden that this will place upon businesses.</p> <p>The Solvency II regime, if applied to pension plans, is likely to lead pension plans to invest more heavily in “risk free” assets such as sovereign debt and to reduce their investments in equities and corporate bonds. We believe that this will lead to an increase in the cost of capital for businesses, which will be detrimental to the level of investment in growth projects.</p> <p>Finally, we wish to note that we have not responded to the 96 detailed questions. This should not be taken to mean that we agree with the proposals, but rather as an indication that we believe Solvency II should not be applied to pension plans.</p>	
122.	Sacker & Partners LLP	General comment	<ol style="list-style-type: none"> 1. This document sets out the comments of Sacker & Partners LLP. Sackers is a firm of solicitors, based in London, UK, specialising in pensions law. We act for in excess of 800 pension schemes, including household names and a number of FTSE-100 clients. The views expressed in Sackers’ response to this Consultation have been collated following discussions with a sub-group of the firm’s solicitors. 2. In the UK, pension funds are not regulatory own funds (as defined in Article 17 of the Directive). Instead, many UK occupational pension funds are set up under trust. As such, they do not have their own legal personality (in contrast to pension funds established in other some other Member States), but instead act through their trustees. 3. UK pension funds already operate in a highly regulated environment. The Pensions Act 2004 imposes strict funding requirements on schemes and gives significant supervisory and enforcement powers to the UK Pensions 	Noted

			<p>Regulator. There are also detailed rules relating to the tax treatment of pensions, operated by HM Revenue & Customs.</p> <p>4. We recognise that EIOPA has been given a narrow remit by the EU Commission (notably, they have asked how funding requirements should be further harmonised, not whether they should be), with very specific questions to consider. However, as the consultation notes, “there are vast differences in the nature, scale and complexity of IORPs among individual Member States as well as within the same Member State.” We agree with the comment that “since the occupational pension landscape is very heterogeneous, there might be cases where the proportionality principle will need to be construed and applied more broadly than under the Solvency II regime”. We therefore urge EIOPA to make it clear in its response to the Commission that it will not be appropriate to apply the Solvency II principles to occupational pension schemes in the EU. Given that there is no standard approach in the provision of occupational pensions across the EU, it is illogical to attempt to apply a narrower framework to all Member States, than exists currently in the IORP Directive. Our answers to specific questions explain our reasoning in more detail.</p> <p>5. Given the length of the consultation document (and the time available to respond to such a lengthy consultation document), we have focused on those questions most relevant to our practice and which will have a direct impact for our clients. We have not repeated the comments made in reply to the first part of this consultation (in August 2011) but those points still stand.</p>	
123.	Siemens Aktiengesellschaft (Germany)	General comment	<p>We believe that the terms of the current consultation are somewhat tendentious, given that EIOPA was required to provide advice on how a solvency regime for pensions might be constructed starting from the basis of Solvency II, rather than considering whether such a solvency regime is appropriate in the first place. We use this General Comments section of our response to set out our opposition to the principles underlying the consultation as a whole.</p> <p>IORPs should be regulated by a regime designed for pensions, not for insurance</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The importance of</p>

		<p>Our view is that applying a insurance-style solvency regime to IORPs is the wrong approach in principle. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide an social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions.</p> <p>EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPS ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be imposed on IORPS, provided that certain adjustments are made to allow for the security provided to IORPS by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether.</p> <p>Applying a solvency regime would not meet the Commission's aims for pensions</p> <p>We also believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, in many cases providing a measure of hyper-security far beyond what is necessary. The cost of such security would, however, be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors responding to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members would pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs. This would be an example of intergenerational unfairness.</p>	<p>impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>
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		<p>We also do not think that a solvency regime for IORPs would meet the objectives set out in the current review of the IORP directive. First, harmonising the funding regime for pensions would not be likely to increase the take-up of cross-border schemes. If anything, increasing the funding requirements would make such schemes even less likely. The obstacles to cross-border schemes are rather to be found in the complex legislative framework attaching to such schemes, to the stringent funding standards already applying to defined benefit cross-border schemes (which are required to be fully funded at all times), and possibly to a genuine lack of demand for such schemes. The second reason for the review of the IORP directive is to 'allow IORPS to benefit from risk-mitigation mechanisms'. However, IORPs already have a number of risk-mitigation mechanisms in place that are precisely designed for the needs of pension schemes in specific Member States. Imposing inappropriate risk-mitigation strategies in the context of funding will lead to increased risks in other areas, in particular in terms of the longer term provision of IORPS to employees.</p> <p>Applying a solvency regime would lead to massive increase in costs for sponsors</p> <p>We are a bit surprised, if not to say disappointed that it appears to be EIOPA's intention to provide advice to the Commission in advance of a quantitative impact assessment. We just do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment.</p> <p>Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs.</p> <p>Our response to the specific questions asked in the document</p> <p>As set out above, we fundamentally would have to disagree with the basic premise of this consultation that a regulatory regime based on Solvency II should be imposed on IORPS. All the specific questions in this consultation are based on this premise and therefore we have seriously considered making no response on any of the specific questions asked in the consultation.</p>	
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			<p>However, on balance, we have decided to answer some of the specific questions asked in the document. Whilst we believe that, in many cases, all of the options under consideration are not convincing, some may be worse than others and therefore we have taken the opportunity to draw attention to these cases. The fact that we are responding to some of the specific questions should not however be taken as implying our agreement to any of the proposals, or the principles underlying them.</p> <p>Given the limited time at our disposal to respond to this consultation, and the fact that the funding and security areas are the most significant areas in the consultation, we have limited our response to some of the questions under CfA5 and CfA6. Absence of a reply to the other questions should not be taken as signifying our agreement.</p>	
124.	Siemens Pensionsfonds AG (GER)	General comment	<p>We believe that the terms of the current consultation are somewhat tendentious, given that EIOPA was required to provide advice on how a solvency regime for pensions might be constructed starting from the basis of Solvency II, rather than considering whether such a solvency regime is appropriate in the first place. We use this General Comments section of our response to set out our opposition to the principles underlying the consultation as a whole.</p> <p>IORPs should be regulated by a regime designed for pensions, not for insurance</p> <p>Our view is that applying a insurance-style solvency regime to IORPs is the wrong approach in principle. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide an social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions.</p> <p>EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPS ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>

		<p>imposed on IORPS, provided that certain adjustments are made to allow for the security provided to IORPS by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether.</p> <p>Applying a solvency regime would not meet the Commission's aims for pensions</p> <p>We also believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, in many cases providing a measure of hyper-security far beyond what is necessary. The cost of such security would, however, be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors responding to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members would pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs. This would be an example of intergenerational unfairness.</p> <p>We also do not think that a solvency regime for IORPs would meet the objectives set out in the current review of the IORP directive. First, harmonising the funding regime for pensions would not be likely to increase the take-up of cross-border schemes. If anything, increasing the funding requirements would make such schemes even less likely. The obstacles to cross-border schemes are rather to be found in the complex legislative framework attaching to such schemes, to the stringent funding standards already applying to defined benefit cross-border schemes (which are required to be fully funded at all times), and possibly to a genuine lack of demand for such schemes. The second reason for the review of the IORP directive is to 'allow IORPS to benefit from risk-mitigation mechanisms'. However, IORPs already have a number of risk-mitigation mechanisms in place that are precisely designed for the needs of pension schemes in specific Member States. Imposing inappropriate risk-</p>	
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		<p>mitigation strategies in the context of funding will lead to increased risks in other areas, in particular in terms of the longer term provision of IORPS to employees.</p> <p>Applying a solvency regime would lead to massive increase in costs for sponsors</p> <p>We are a bit surprised, if not to say disappointed that it appears to be EIOPA's intention to provide advice to the Commission in advance of a quantitative impact assessment. We just do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment.</p> <p>Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs.</p> <p>Our response to the specific questions asked in the document</p> <p>As set out above, we fundamentally would have to disagree with the basic premise of this consultation that a regulatory regime based on Solvency II should be imposed on IORPS. All the specific questions in this consultation are based on this premise and therefore we have seriously considered making no response on any of the specific questions asked in the consultation.</p> <p>However, on balance, we have decided to answer some of the specific questions asked in the document. Whilst we believe that, in many cases, all of the options under consideration are not convincing, some may be worse than others and therefore we have taken the opportunity to draw attention to these cases. The fact that we are responding to some of the specific questions should not however be taken as implying our agreement to any of the proposals, or the principles underlying them.</p> <p>Given the limited time at our disposal to respond to this consultation, and the fact that the funding and security areas are the most significant areas in the consultation, we have limited our response to some of the questions under CfA5 and CfA6. Absence of a reply to the other questions should not be taken as signifying our agreement.</p>	
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125.	Social Partners Bosch-Group Germany (Management Bo	General comment	<p>Joint Declaration of the Social Partners of the Bosch-Group in Germany on the planned regulation of institutions for occupational retirement provision (IORPs) at European Level</p> <p>The Management Board and the Group Works Council of the Bosch-Group in Germany urge the EU Commission and EIOPA, in view of the planned revision of the IORP Directive, to refrain from extending the capital requirements applicable to the insurance industry with effect from 1 January 2013 under the Solvency II Directive to IORPs. This would lead to a severe loss of efficiency in occupational retirement provision in Germany without affording any additional security.</p> <p>The application of Solvency II stipulations to IORPs is objectively unjustified and counterproductive.</p> <p>It is objectively unjustified since German IORPs and the respective vested pension rights of the beneficiaries are already comprehensively covered and secured by national supervisory legislation and financial supervision. In addition to the subsidiary liability of the employer, pension funds are also protected by the Pensionsversicherungsverein for the case of employer's insolvency. These structures of occupational retirement provision have proven their effectiveness during the past financial crisis.</p> <p>The application of the capital requirements of Solvency II would therefore not provide any additional security for the eligible employees and pensioners.</p> <p>Furthermore, the regulation for the insurance industry cannot be transferred to IORPs, since the two are not comparable: the latter do not offer any financial service products and do therefore not compete with other pension products on a free market.</p> <p>The application of Solvency II capital requirements would also be counterproductive because it would thwart the necessary expansion of occupational retirement provision.</p> <p>The regulation intended by the EU Commission would considerably increase cost for IORPs, something which could only be financed either by reducing benefits</p>	<p>Noted</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p>
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			<p>to the disadvantage of beneficiaries or by higher contributions of employers. The Social Partners of the Bosch-Group in Germany have created attractive conditions for occupational pension provision for both employer and employees and thus make a considerable contribution towards securing their employees' retirement income. In view of the gaps anticipated in statutory systems, this is an urgent necessity and must not be jeopardized by uncalled-for regulations at European level.</p> <p>Stuttgart, 15.12.2011</p>	
126.	Standard Life Plc	General comment	<p>About Standard Life</p> <p>Standard Life is pleased to respond to EIOPA's second consultation on their response to the European Commission call for advice on the review of the IORP Directive, 2003/41/EC. Providing sustainable, adequate and secure pensions for citizens across the European Union is essential.</p> <p>Standard Life is a trusted provider of innovative pension products in several member states in the EU, and the leading provider of workplace pension schemes in the UK, where we administer group schemes with over one million members. The content of our response reflects the role we play and our experience and success in enabling and encouraging employers and employees to save voluntarily for retirement. As an employer, we operate both defined benefit and defined contribution pension schemes for our employees in the UK, Ireland and Germany. Finally, through Standard Life Investments we manage assets on behalf of pension funds (At the end of September 2011, Standard Life Group had total assets under administration of over £191bn). As such, we are well placed to share our experiences and our vision for the future of the EU pensions system.</p> <p>As members of the Association of British Insurers, we have also contributed to, and we endorse, their response to this consultation. Given the potential scale and significance of the changes being consulted on however, we have also chosen to respond directly on some key questions within the paper.</p>	<p>Noted</p> <p>The comment about the high degree of diversity of pension arrangements across the EU member states weakening the case for harmonisation has been recorded in the introductory chapter</p>

			<p>Executive summary - General comments on overarching objectives</p> <ol style="list-style-type: none"> 1. The European Commission has stated that its three overarching objectives for pensions across Europe are adequacy, sustainability and security. We believe that some of the capital requirements proposed here are focused on one of the three objectives – security – at the unnecessary expense of the other two objectives, rather than on achieving the optimum balance of the three. Many of the quantitative requirements proposed would make existing pension scheme arrangements unsustainable for employers and sponsors, resulting in a diminution of pension provision, and potentially reducing the adequacy of retirement income for large numbers of scheme members. 2. From a market stability perspective we also have concerns over the potential shift in investment strategies which such a regime would likely result in as schemes moved to de-risk in line with new requirements. The scale of pension scheme assets under management are so significant that market distortions from supply and demand could result, which would obviously have much wider implications than just for pension schemes. 3. We have significant concerns over the quantitative requirements expressed in the paper. We believe the desire to apply Solvency II, which was designed as an insurance company regime, to pension schemes will result in some onerous and inappropriate requirements for employers and pension providers. 4. The UK DB scheme has a long history and over the years has incorporated various methods to ensure the protection of member assets and accrued liabilities. It is important to continuously evolve the structure of UK DB 	
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			<p>scheme pension provision but it is also important that this happens at a rate which is consistent with the ability to financially support the changes.</p> <p>5. The needs of all stakeholders need to be balanced to achieve the best outcome. Ignoring the impact on sponsors and focusing only on the members is likely to result in the risk that significant step changes will be counterproductive and reduce the retirement provision (or other benefits) provided to employees. We are sure this is not the intention of the proposals and we stress the importance of understanding the chain of events which excessively onerous and rapidly introduced changes could bring for employees and employers.</p> <p>6. We are supportive of consistency, and minimum standards, for companies across Europe with respect to the security provided to the benefits of pension schemes, but this does not necessitate the introduction of an onerous regime which could threaten the remuneration of the very people it is trying to protect.</p> <p>7. For any changes deemed to be necessary, we recommend a measured and incremental approach to implementation, which explicitly recognises, and consults on, the impact that each stage would have on all stakeholders of pension schemes to ensure that transitions through regulatory change do not result in negative short term actions and volatility in the market place.</p> <p>8. We support the view expressed that there is no 'one size fits all' approach to the operation of occupational and retail pensions in Europe - due to demographic, national and societal structures which differ across the EU 27 Member States, as well as the significant influence of differing approaches to taxation.</p>	
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			<p>9. We welcome the intention to encourage a single market for pensions in Europe and to remove any inappropriate barriers to cross-border activity.</p> <p>10. The value of the employer covenant and pension protection fund in the UK need to be suitably recognised.</p> <p>11. We have some concerns over the potential impact on members' involvement as trustees of pension schemes.</p> <p>12. The starting point for the design of any information or communication provided to customers should be what they say they value and find meaningful. We have shared our thoughts below on best practice for communications with members, based on our extensive customer research and our experience of helping our business customers to raise levels of engagement and understanding of pensions with their employees.</p>	
127.	State Street Corporation	General comment	<p>1. State Street Corporation ("State Street") <input type="checkbox"/> appreciates the opportunity to comment on the SECOND Consultation Paper ("Consultation") issued by the European Insurance and Occupation Pensions Authority ("EIOPA") on its Call for Advice ("CfA") on the review of Directive 2003/41/EC on Institutions for Occupational Retirement Provision ("IORPs").</p> <p>2.</p> <p>3. Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union ("EU"), State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$21.5 trillion in assets under custody and administration, as well as \$1.9 trillion in assets under management, we operate in 26 countries and in more than 100 markets worldwide. <input type="checkbox"/> Our European workforce of over 8,700 employees provides services to our clients from offices in ten EU Member States. We are authorized to operate as a depositary in seven</p>	Noted

			<p>national jurisdictions, namely Austria, France, Germany, Ireland, Italy, Luxembourg and the United Kingdom.</p> <p>4.</p> <p>5. In keeping with our industry leading position as providers of financial services to institutional investors and our commitment to EU financial markets, we welcome the opportunity to comment on EIOPA's CfA. EIOPA's advice will play a crucial role in the review of the IORP Directive and thereby in determining the future framework for occupational pensions in the EU.</p> <p>6. Our response is focusing solely on CfA 21: Custodian/ depository in the context of question 83.</p>	
128.	TCO	General comment	<p>General Comment</p> <p>TCO, the confederation for professional employees, brings together many different groups of professionals in 16 affiliated unions, including the private and the public sectors, and with a combined total of 1,2 million members.</p> <p>Occupational pensions and labour market insurance, established through collective agreements between the social partners, have a long tradition in Sweden and constitute an important complement to the social security system provided by the state. The Swedish labour market is mainly regulated by collective agreements, while legislation gives a framework for negotiations by regulating how social partners should respond to each other and the resolving of disputes. As for occupational pensions and injury insurance more than 90 percent of the employees are covered by insurance based on collective labour agreements.</p> <p>TCO welcomes the opportunity to respond to the Call for Advice on the review of Directive 2003/41/EC: second consultation.</p> <p>TCO fully supports the EU objective to achieve sustainable, safe and adequate</p>	<p>Noted</p> <p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>

		<p>pensions and to make citizens aware of the importance of pensions. TCO is also supportive of the approach in the Call for Advice; that supervisory regulation, as a starting point, should be risk based.</p> <p>TCO is however concerned that the risk based approach, when extended to embrace also capital requirements with focus on pension security and scheme funding levels, could have detrimental effects on existing occupational pension systems. Applying to IORPs the same Solvency Capital Requirements as foreseen in the Solvency II Directive, would most likely result in an increase in their required assets. This in turn would lead to lower benefits and less risk taking, which itself constitutes an inherent risk. Forcing investment portfolios to shift pension fund investments out of equity and into fixed interest assets, future returns are threatened thereby risking future pension payments. Therefore TCO also opposes the proposed holistic balance sheet approach.</p> <p>National pensions and pension systems are inextricably connected to national social and labour laws, tax regulations and traditions in the member states. This makes it utterly important that any assessment of occupational pensions regulations on the EU-level recognizes the diversity of national conditions and the functioning of existing pension systems across the member states. Amendments to the European legislation may have detrimental effects on the goals of the EU as well as on existing pension systems in the member states, systems that have proven to work well also during the financial crisis.</p> <p>Regarding the diversity of pension systems in the member states and the different legal and social environments in which they exist, and adding the probable negative impacts a revision of the IORP-directive could have, TCO suggests that:</p> <ul style="list-style-type: none"> - A thorough impact assessment should be carried out before any legislative proposals related to the IORP-directive are made 	
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			<p>- A revisions of the IORP-directive should be linked to other EU related initiatives, such as the White Paper on Pensions and issues related to employment, growth and social progress as expressed in the Europe 2020 strategy.</p>	
129.	Tesco PLC	General comment	<p>Tesco welcomes the opportunity to respond to EIOPA’s final consultation on the Call for Advice (CfA) on the review of Directive 2003/41/EC for Institutions for Occupational Retirement Provision (IORPs).</p> <p>Background to Tesco and our pension arrangements</p> <p>Tesco is one of the world’s largest retailers, with operations in six EU member states – the UK, Ireland, Poland, Czech Republic, Slovakia and Hungary. We are a major contributor to the EU economy, with over 3,900 stores and over 375,000 employees across our markets.</p> <p>Our award-winning UK pension scheme is one of the largest private sector defined benefit (DB) schemes that still remain open to new employees. We have around 167,000 employed members and over 280,000 participating members in total. The scheme is open to all Tesco staff, no matter how low their earnings are. Almost 70% of our members are female. Entry is automatic for employees who are over age 25 and have more than one year’s service. Over 90% of automatically enrolled staff choose to stay in the scheme and say it is a great way to save for the future.</p> <p>Our Tesco Ireland Pension Scheme also still remains open to new employees - with around 3,000 employed members in total. Tesco Ireland is one of the few companies in Ireland to continue to offer defined benefit pension to both new and existing employees.</p>	<p>Noted</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>General views</p> <p>We support the Commission’s objective of achieving adequate, sustainable and safe pensions systems in the European Union. We are keen to engage in a constructive debate as to how this is best achieved. However, it is important to stress that we strongly oppose the application of a Solvency II-style funding regime (pillar 1) to occupational pension schemes on principle because as we set out below, such a funding regime would do nothing to help the Commission increase pension security.</p> <p>A Solvency II-style regime would weaken – not strengthen – EU pension provision</p> <p>Perversely, Solvency II rules would make occupational pension schemes unaffordable for employers to run, forcing schemes to close. In the UK, the proposals would undermine the security of the 7.7m active members in DB schemes (about 27% of the workforce).</p> <p>Future pension provision would have to be provided by defined contribution (DC) schemes, where members undertake the risk instead of the employer and typically receive lower benefits than those offered by a DB scheme. The closure of DB schemes would also put a strain on the state at a time of economic uncertainty, as more people are likely to claim benefits from it. This not only undermines the Commission’s original objective, but also the Flexicurity agenda, which aims to create more security for employees.</p> <p>Solvency II rules would also be disastrous for the EU economy</p>	
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			<p>Higher funding requirements would force businesses to divert money away from investment in growth, enterprise and job creation, undermining the EU's economic goals at a critical time. In practical terms, this may restrict Tesco's capital for store development, Regeneration Partnership schemes and jobs for the long-term unemployed. This may also lead to a loss of tax revenue for the state in the form of corporation and income taxes, and VAT.</p> <p>The proposals could also destabilise already volatile financial markets and drive capital out of the EU. Pension funds would be forced to shift to low-return investment strategies, choosing bonds over equities, which could significantly impact companies' share prices and their ability to raise capital in the markets.</p> <p>The current IORP Directive works well and respects subsidiarity</p> <p>Given the diversity of member states' pension arrangements, which are tied to national social and labour laws, it would not be sensible to impose a single funding regime. Many member states, such as the UK, have strong security mechanisms in place, which have proven robust during the economic crisis.</p> <p>A solvency regime for the insurance sector is inappropriate for pension funds</p> <p>Insurance companies and occupational schemes are not comparable, and we therefore reject the idea that there should be a level playing field. Firstly, unlike insurance companies, pension funds do not operate on a commercial basis - they are part of an employer's benefit package for staff. Secondly, Solvency II was specifically designed to address the short term volatility risks in the insurance sector. It would be wrong to apply the regime to pension funds as</p>	
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		<p>there is a far lower degree of volatility in cash flows, with contributions paid by the sponsoring employer over a much longer time period.</p> <p>The holistic balance sheet needs further clarification</p> <p>While we strongly oppose a Solvency II-style regime on principle, the holistic balance sheet does have some merit, as it gives credit to the financial strength of the employer on the balance sheet. However, it is difficult to form a conclusive view as there is little detail in the consultation on how this is valued. EIOPA should clearly define the method for valuing holistic balance sheet components rather than leave this to Level 2 measures, which are subject to minimal political scrutiny.</p> <p>There are alternatives to a Solvency II-style regime</p> <p>Non-legislative instruments such as the Open Method of Coordination for sharing best practice and information between member states would not only encourage stronger pension provision across the EU, but would also support the Commission's objective to reduce burdensome regulation and reduce costs for employers. Such an approach would allow the Commission to focus on other areas of the IORP Directive review, namely transparency and governance (pillars 2 and 3), which could usefully be strengthened.</p> <p>On a final note, we have concerns that the IORP Directive review process is being needlessly rushed and will lead to ill-judged policy decisions on a vitally important policy area for all member states. The short consultation period and EIOPA's tight deadlines for giving advice leave little time for careful analysis of the detail. It is critical that proposed changes to the Directive are accompanied by a rigorous impact assessment, and that more information is given to</p>	
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			<p>stakeholders as the review process progresses.</p> <p>We would be happy to discuss our consultation response with you further. Please do not hesitate to contact us.</p> <p>1. <input type="checkbox"/> ONS, Pensions Trends, September 2011. Total UK workforce approx 29m according to ONS Labour Market Statistics, November 2011</p>	
130.	THE ASSOCIATION OF CORPORATE TREASURERS	General comment	<p>The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.</p> <p>Our 4,200 members work widely in companies of all sizes through industry, commerce and professional service firms.</p> <p>For further information visit www.treasurers.org</p> <p>Guidelines about our approach to policy and technical matters are available at http://www.treasurers.org/technical/manifesto.</p> <p>General observations</p> <p>The proposals on which EIOPA advice is being sought are very much based on the principle that IORPs providing defined benefits schemes operate in the same market as life insurance undertakings and therefore must be regulated in the same manner. The ACT strongly believes that this is not true and that therefore the entire concept of applying Solvency II style provisions on occupational pension schemes is fundamentally flawed. Within the consultation para 8.2.35 says "For sponsor backed IORPs however, the ability to rely on the sponsor for further support represents a key difference from insurance and</p>	Noted

			<p>requires differing treatment.” Therefore trying to create a framework via the holistic balance sheet that can apply equally to IORPs and insurance based pensions is not appropriate.</p> <p>We appreciate the intentions of the Commission are to ensure that the risk to pensioners is minimised, but it is not a satisfactory outcome for society if rules to make pensions safer have the result that employees are no longer offered occupational pensions and instead must rely on savings schemes or fall back onto state welfare payments. We believe that imposing onerous requirements on the funding of IORPs would result in the closure of defined benefit schemes in the UK, to the detriment of those who might otherwise be beneficiaries of a company backed pension scheme.</p> <p>It is right that pensioners should have a reasonable level of protection but the fact is that no pension can be made absolutely risk free. It is therefore a matter of finding a reasonable balance such that the sharing of risks and obligations is set fairly between pensioners and scheme sponsors.</p>	
131.	The Association of Pension Foundations (Finland)	General comment	<p>Occupational pension scheme differs in many terms from insurance undertaking. It doesn't offer pension scheme benefits to public at large but only to its employees. Occupational pension scheme is not business activity nor it is organized to make profit for shareholders.</p> <p>There should keep in mind not to demotivate the contemporary sponsors to shut down plans or cut benefits nor give disincentives to future sponsors to rather take company book reserves or other vehicles less regulated which evidently would not give more secured and larger benefits.</p> <p>The review of IORP should not cover the pillar I issues of solvency II as this would considerably raise the costs of pension provision, overly complex and burdensome administration, lead to overfunding and very volatile assets and</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>liabilities and therefore de-risking of investment portfolios. It would hurt whole European economy by increasing labor costs in difficult financial situation and therefore affect the competitiveness of European Economy.</p> <p>Pure DC-plans are arranged in co-operation with personnel and sponsor. Personnel have representation in it's board. It should be made a careful impact assessment before increasing information requirements that similar arrangements in insurance companies would not be left out with less requirements and less secured position to insured members as in member countries may already have stipulated extra information requirements for IORP's. Such legislation has been made in Finland.</p> <p>Taking in consideration the principle of proportionality, the article 4 of exclusion of regulation due to size should be clearly stated in IORP. At the moment Finland has taken no exceptions due to size. Then it would be reasonable to leave out pension funds with less than 100 members and pension fund which meet the requirements laid down in article 4 of SII.</p> <p>The revision of IORP Directive should be linked to EC White Paper and macro-economic , and growth-related initiatives.</p>	
132.	The Association of the Luxembourg Fund Industry (A	General comment	<p>The Respondents would like to align their general comments to EFRP's comments as mentioned below.</p> <p><input type="checkbox"/> The debate on occupational pension provision and the rules by which occupational pensions are provided is a political one and not a technical one only. The Respondents therefore call for a political debate within the European Commission and with stakeholders and national governments. The approach should be holistic, since pensions are an issue for all European citizens. It should be closely linked to other EC pension-related initiatives, such as the EC White Paper on Pensions.</p> <p><input type="checkbox"/> The Respondents once again laments the insufficient timeframe within</p>	<p>Noted</p> <p>The importance of proportionality is recognised in the introductory chapter and throughout the advice</p>

			<p>which stakeholders are asked to comment on the 500-plus page consultation.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The Respondents would once again underline the flawed logic behind the “same risks, same rules” and “level playing field” approach to the IORP review. It should be a case of “different functions, different standards” instead. <input type="checkbox"/> Where revised rules are proposed for IORPs, the principles of proportionality and subsidiarity should be respected. This means that the nature, size and (lack of) complexity of IORPs should be recognised in the regulatory texts. <input type="checkbox"/> The Respondents want to see a thorough, adequate impact assessment study carried out before the revised IORP Directive is proposed. This impact study should look into both micro- and macro-economic impacts of the new rules on pensions. On a micro-economic level, revised rules may discourage and stop employers from offering pensions to their staff. <input type="checkbox"/> The Respondents would warn against adverse impacts on investments and economic growth: if pension funds are forced to de-risk, this will have an effect on benefits and on financial markets and economic growth. <input type="checkbox"/> The supply and cost-efficiency of occupational pensions should not be jeopardised, as the Commission’s Call for Advice states in its paragraph 1.3. <input type="checkbox"/> Much of the EIOPA and European Commission documents are inspired by a “consumer protection” language. The Respondents find this inappropriate, since occupational pension plan members do not freely choose a pension “product” in the open market like someone purchasing an insurance policy does. <input type="checkbox"/> In several Member States the social partners and pension plan members and beneficiaries play a formal role in the governance of IORPs. The IORP review should not negatively impact their role. 	
133.	The Hundred Group of Finance Directors (UK)	General comment	<p>Introduction</p> <p>The Hundred Group represents the views of the finance directors of the UK’s largest companies drawn largely, but not entirely, from the constituents of the</p>	<p>Noted</p> <p>The point about the not-for-profit nature of</p>

		<p>FTSE100 Index. Our members are the finance directors of companies whose market capitalisation collectively represents over 80% of that of companies listed on the London Stock Exchange.</p> <p>We believe that the terms of the current consultation are deeply flawed, given that EIOPA was required to provide advice on how a solvency regime for pensions might be constructed starting from the basis of Solvency II, rather than considering whether such a solvency regime is appropriate in the first place. We use this General Comments section of our response to set out our fundamental opposition to the principles underlying the consultation as a whole.</p> <p>IORPs should be regulated by a regime designed for pensions, not for insurance</p> <p>Our view is that applying a insurance-style solvency regime to IORPs is wrong in principle. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide an social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions.</p> <p>EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPS ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be imposed on IORPS, provided that certain adjustments are made to allow for the security provided to IORPS by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether.</p> <p>Applying a solvency regime would not meet the Commission's aims for pensions</p> <p>We also believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety.</p>	<p>many IORPs is recorded in the introductory chapter</p> <p>The point about obstacles, apart from a non-harmonised regulatory framework, to cross-border schemes is recorded in the introductory chapter</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p> <p>The point on discouragement of equity investment has been noted in the introductory chapter.</p>
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		<p>regulatory requirements, including the need to calculate solvency capital or place a value on the employer's covenant, would add considerably to the advice costs faced by IORPs and their sponsors. These could easily run into tens of thousands of pounds per annum for each of the around 7,000 UK defined benefit pension schemes. The quantitative impact assessment should also address these costs.</p> <p>We would also note that, even if a proposal is relatively minor and unobjectionable in itself, it will bring in its wake considerable advice costs, at least in the initial stages of introduction, as IORPs seek advice on the implications of each measure for their pension scheme. In many Member States, neither the trustees or managers of the IORP nor their advisers will have any expertise in the Solvency II regime and therefore there will be additional costs as they seek to understand concepts that are being applied to IORPs for the first time and that seem fundamentally removed from their experience of pensions regulation to date. This is another argument as to why it is better to start from the text of the IORP directive itself, a text designed for pension schemes, rather than from the Solvency II directive.</p> <p>Applying a solvency regime to pensions would have impacts on the wider economy</p> <p>Applying a regime based around a risk-free discount rate and solvency capital requirement would lead to a change in pension schemes' asset allocation. Instead of investing in a wide range of assets including equities, corporate debt, derivatives and gilts, schemes would be likely to switch to 'risk-free' investment in gilts. This could lead to a substantial disincentive for long-term investment in corporate debt and equity, which could have permanent impacts on the willingness of pension schemes to invest in the wider corporate economy.</p> <p>Further, if additional capital was required to provide additional scheme funding, it would create additional pressure on corporate credit ratings. The consequences of this would extend beyond the availability and cost of finance, impacting on core commercial matters such as supplier payment terms, bank credit availability and conditions around property leasing. More strategically, it would fundamentally restrict companies from implementing capital investment</p>	
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		<p>programmes, thereby stifling growth and putting pressure on dividends, both impacting valuations and therefore share prices, resulting in a compounded impact on equities.</p> <p>Finally, if companies were required to fund increased liabilities as a result of applying Solvency II type regulations, then this may affect financial covenants held within bank facilities or issued debt in public or private markets. This would potentially require companies to renegotiate these covenants at a material cost or at worst result in a cancellation of those facilities/repayment of debt with potentially serious consequences.</p> <p>Now is not the right time to consider this issue</p> <p>The proposal to apply Solvency II to pensions with minimum alterations is premature in any case, since Solvency II remains untested for insurance companies. We believe that the regime should be tested in practice for a period of years before there is even any consideration of applying the same regime to pensions.</p> <p>Also, the current European market turmoil strongly suggests that now is not the time for Europe to be considering any major changes which could destabilise investment markets through changes to asset allocation by pension schemes. The current crisis has also challenged the very notion of 'risk-free' investment and it will be necessary to form a revised understanding of what risk-free means in practice before such concepts can be applied to pension schemes.</p> <p>For these reasons, we believe that the review of the IORP directive (and in particular the funding and security proposals contained in EIOPA's draft response) should be deferred for three to five years.</p> <p>Our response to the specific questions asked in the document</p> <p>As we have set out above, we fundamentally disagree with the basic premise of this consultation that a regulatory regime based on Solvency II should be imposed on IORPS. All the specific questions in this consultation are based on</p>	
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			<p>this premise and therefore we have seriously considered making no response on any of the specific questions asked in the consultation.</p> <p>However, on balance, we have decided to answer some of the specific questions asked in the document. Whilst we believe that, in many cases, all of the options under consideration are wrong, some may be worse than others and therefore we have taken the opportunity to draw attention to these cases. The fact that we are responding to some of the specific questions should not however be taken as implying our agreement to any of the proposals, or the principles underlying them.</p> <p>Given the limited time at our disposal to respond to this consultation, and the fact that the funding and security areas are the most significant areas in the consultation, we have limited our response to some of the questions under CfA5 and CfA6. Absence of a reply to the other questions should not be taken as signifying our agreement.</p>	
134.	The Society of Actuaries in Ireland	General comment	<p>The Society of Actuaries in Ireland is the professional body representing the actuarial profession in Ireland. The Society is dedicated to serving the public through the provision by members of actuarial services and advice of the highest quality. In this regard, a large number of the Society's members provide advice to trustees and employers in relation to occupational pension schemes. We believe that we are well placed to make this submission to EIOPA's "Response to Call for Advice on the review of Directive 2003/41/EC: second consultation" and we are grateful for the opportunity to do so.</p> <p>The Society is an active member of the Groupe Consultatif Actuariel Européen. We have contributed to the preparation of the Groupe's response. However, we wish to submit our response separately too as it includes some commentary on matters as they relate to the Irish pensions environment.</p>	Noted
135.	THE SOCIETY OF PENSION CONSULTANTS	General comment	<p>SPC is the representative body in the UK for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPC's Members' profile is a key strength and includes accounting firms, solicitors,</p>	Noted The existence of

		<p>insurance companies, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPC is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and services. We do not represent any particular type of provision or any one interest - body or group.</p> <p>Many thousands of individuals and pension funds use the services of one or more of SPC's Members, including the overwhelming majority of the 500 largest UK pension funds. SPC's growing membership collectively employs some 15,000 people in the UK providing pension-related advice and services.</p> <p>The consultation paper has been considered by SPC's European Sub-Committee, which comprises representatives of actuaries and consultants, insurance companies, pension administrators and pension lawyers.</p> <p>General commentary on the EIOPA consultation document, the Commission's Call for Advice and the proposed review of the IORP Directive</p> <p>We question the basic premises that the European Commission has cited as necessitating the review of the IORP Directive – namely (i) to facilitate cross-border provision and (ii) to 'level the playing field between insurers and pension funds'. The second of these was cited as a reason by Karel van Hulle at the EIOPA conference in Frankfurt on 16th November 2011, although we note that in the EIOPC minutes for the meeting of 14th July 2011, a rather different emphasis was given, namely that the second objective of the review is to: "introduce risk-based supervision, drawing on the Solvency II Framework Directive"</p> <p>On the first of these, we admire the Commission's ambition to help the development of cross-border pension provision. However, we think this could be</p>	<p>pension protection schemes in some member states is recognised in the introductory chapter</p>
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		<p>achieved by confining the review to those matters (within the call for advice) relating directly to cross-border provision – for example the definition of cross-border activity and what does or does not constitute ‘prudential regulation’. We consider, however, that more work is needed on this and the ‘rushed’ approach taken does not augur well for effective legislation.</p> <p>The Commission has, in the past, suggested that a more harmonised supervisory structure is necessary to combat regulatory arbitrage. The Call for Advice states that the low number of cross-border arrangements is evidence that more needs to be done to facilitate such provision. The low number of such arrangements contradicts the suggestion that ‘regulatory arbitrage’ exists or is even a risk – otherwise there would have been a widespread rush to the most ‘benign’ regulatory environment.</p> <p>Perhaps the Commission’s view is coloured by the perception that this is what could have occurred within the insurance ‘market’. The fact that this has not occurred evidences the oft-cited response to the Commission that a pension fund is not like an insurance product. Which brings us to the issue of whether or not there is a ‘playing field’ on which insurers and pension funds compete and, if so, whether that playing field is, needs to be, or can be level.</p> <p>The form, nature and level of pension provision are some things, which can change from time to time – as agreed between the employer and employee (or his or her representative). Such review and adjustment appears to us to be unlikely to exist in the insurer/policyholder relationship; particularly as the latter is a commercial contractual relationship.</p> <p>Undoubtedly it is possible for an employer to enter into an insurance contract to help deliver, in part or fully, a pension promise. (It may be reassuring to the</p>	
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			<p>employer, as policyholder, that this insurer's capital adequacy requirements are to be grounded in the supervisory structure of Solvency II.) Alternatively, the employer may decide to 'fund' for that pension promise through a legally separate 'pension fund'. Yet another option is not to fund the pension promise at all, but to make provision (whether partially or fully backed by specific assets) on the employer's balance sheet for that promise. In any event, ultimately the employer is responsible for the pension promised to his employees. Where that promise is at risk of not being delivered – for example were the employer to become insolvent – there is a strong argument that this 'risk' should be adequately communicated with the employee, but we see no need for this to be translated into an additional pre-funded capital buffer to cover that eventuality. Moreover, whilst it is unlikely that there would be a suitable 'alternative' available to the employee, even if he or she were more clearly informed of the 'risk' to delivery of the promise (employers tend to arrange/select one mechanism for delivering the pension promise – at least at any given time), adequate communication of the 'risks' enable the employee to take whatever steps are available to him to mitigate those risks. For example, through additional (or, if the employee wishes, having considered the communicated risk, alternative and independent) pillar 3 provision.</p> <p>In the UK context, consideration of risk needs to take into account the existence of the Pension Protection Fund.</p> <p>In brief, therefore, there is merit in pursuing the ambitions of improving (a) pension fund governance – including a system for understanding and managing risks within pension funds - and (b) member understanding. However, we do not consider it appropriate, desirable or achievable to impose a truly harmonised capital adequacy requirement on second pillar (supplementary occupational) pension provision throughout Europe.</p>	
136.	The Trustees of	General	Due to the short deadline for responses to the consultation, we have been able	Noted

	the RNLi 1983 Contributory Pension	comment	<p>to respond only on the issues which are of highest importance to us.</p> <p>As Trustees of the Scheme our main concern is the security of members' benefits. As such we generally support the proposals put forward. However, we are very concerned at the impact the proposals may have on the RNLi (and more generally sponsoring employers of pension schemes).</p> <p>As such, we fully support the recommendation for a full cost / benefit analysis of the proposals.</p> <p>We strongly disagree that pension schemes should be treated in similar ways to insurance companies which are inherently very different entities.</p> <p>We believe that any consideration as to whether pension schemes should be subject to a "Solvency II" style regime should be postponed until there has been practical experience of the Solvency II Directive for insurers (which is not fully operational until January 2013). Unanticipated issues, which might be detrimental to pension schemes, members and the wider economy may emerge, and we do not believe that there is any compelling case for urgent action (if any).</p>	
137.	Towers Watson	General comment	<p>1. We have taken the opportunity in this section to provide, in effect, an executive summary of the points that we make in detail in our responses to the specific questions raised. We have grouped our general comments under several headings:</p> <ol style="list-style-type: none"> 1. Timescale for consultation 2. Rationale for the review 3. Starting point for the review 	<p>Noted</p> <p>The point about lack of demand being a factor in the lack of cross-border schemes is recorded in the introductory chapter</p>

		<p>4. Proportionality</p> <p>5. Robust, quantified impact assessments</p> <p>Timescale for consultation</p> <p>As we stated in our response to the first consultation in July/August, Towers Watson believes that the Commission's aspired timescale for reviewing the IORP Directive is unnecessarily short. The issues at stake are so wide-ranging and important for second pillar provision, that a far longer consultation process is absolutely essential. In particular, we believe that a rushed review without adequate opportunity for further consultation and impact assessment could ultimately harm rather than support workplace pension provision throughout the EU</p> <p>We consider that the following areas warrant particular care in trying to establish the consequences of the proposals. It appears to us to need longer for each of these issues to be considered in sufficient detail:</p> <p><input type="checkbox"/> The definition of cross-border activity. The proposal might go some way to achieving harmonisation of the definition, but we think that some terms still offer scope for confusion. There are also fundamental issues that have not been addressed, such as developing a common understanding of what is or is not a 'pillar II occupational pension'. Issues relating to what is or is not Defined Contribution – hence reference in the consultation to 'pure' DC - are clearly known by EIOPA and the Commission, but there is no attempt to address these. We believe that there would be merit in doing so</p> <p><input type="checkbox"/> Prudential rules. Although CfA4 is primarily concerned with cross-border activity, its ultimate impact could be far greater as it seeks to tease out the divide between national powers and those of the European Commission (EC) in relation to pensions issues. Once determined, this could give greater scope for the EC to intervene in what might naturally be considered purely domestic</p>	<p>The comment on pro-cyclicality has been recorded in the introductory chapter</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p> <p>The importance of proportionality is recognised in the introductory chapter and throughout the advice</p> <p>The importance of impact assessment and the position in respect of a quantitative impact study is described in the introductory chapter</p>
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		<p>matters. We are concerned that some stakeholders might be unaware of this and, consequently, will not have given this section the attention that it requires.</p> <p>Rationale for the review</p> <p>The Commission’s legal power to make or review an IORP Directive was initially to create, and now to develop, a single market in occupational retirement provision. In this regard, the Commission suggests that an absence of widespread cross-border pension plans evidences failure of the existing Directive. This conclusion is unsubstantiated and in our opinion incorrect.</p> <p>In the recent past, the Commission has suggested that a more harmonised supervisory structure is necessary to combat regulatory arbitrage. The low number of cross-border arrangements contradicts this suggestion. Had such arbitrage existed would there not have been a rush to the most ‘benign’ regulatory environment? In the world of insurance, differences in the supervisory regime for insurers might have led to such regulatory arbitrage, due to the inherent ‘similarity’ in insurance products in one Member State with those in another. However, with pillar II occupational pension provision, this is clearly not the case.</p> <p>We acknowledge that it is possible to further facilitate a single market by any reasonable non-obstructive measure (this will always be the case), but there is no evidence of current significant demand for cross-border provision, nor that that demand would be prompted by greater harmonisation of the supervisory regime for pension funds. Moreover, it is evident from EIOPA’s draft response to the call for advice that far more thought is needed in relation to those elements seeking to amend the Directive to facilitate cross-border provision. At the moment there appears to be a distinct likelihood that some of the proposals have the potential, to a greater or lesser degree, to frustrate the development of such arrangements rather than assist it.</p>	
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			<p>Starting point for the review</p> <p>Although we agree in principle that it is appropriate to review the IORP Directive, it is not obvious to us that there is an imperative for significant change. The existing IORP framework has not contributed substantially to the financial crisis. There is also a possibility that greater harmonisation of solvency requirements could potentially exacerbate issues relating to pro-cyclical behaviour and, hence, help create systemic risk. Although the principle of comparability of pension systems from one Member State to another, or from insurers and banks to pension funds, may be desirable, it should not be an objective that overrides other considerations. Moreover, the scope of any such comparability needs to be clear.</p> <p>In para 31 of its report on the Green Paper proposals (of July 2010) the European Parliament agreed with the Commission that “A high degree of security for future pensioners, at a reasonable cost for the sponsoring undertakings and in the context of sustainable pension systems, should be the goal.” [our emphasis]. The report goes on to state that proposals for a solvency regime for pensions must recognise that “risks in the insurance sector are different from those faced by IORPs”. The European Parliament clearly concludes that the mantra of “same risk, same capital” is misleading – as the risks in pension funds are not the same as those in insurance undertakings.</p> <p>We consider that Solvency II in its pure form might be a reasonable starting point for some, but by no means all, of the risk-based supervision elements underpinning a new IORP Directive.</p> <p>We agree with the Parliament that IORPs are different from insurers and, in particular, we do not believe it is appropriate to have a Solvency Capital Requirement for UK IORPs. We expand on the following in our response to question 38, but summarise our view as follows: –</p>	
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		<ul style="list-style-type: none"> <input type="checkbox"/> adding a notional SCR onto the existing funding shortfall - increasing the reliance on employer covenant - does not obviously improve outcomes <input type="checkbox"/> IORPs cannot quickly change their capital base to reflect changes in the SCR. Any application of a risk-capital approach to IORPs should therefore be proportionate to the range of actions that are possible <input type="checkbox"/> IORPs should not be required to hold more assets than the cost of buying-out their liabilities (ie transferring the liabilities to an insurer) <input type="checkbox"/> the Pension Protection Fund (PPF) 'insures' against default for a significant proportion of IORPs' liabilities <input type="checkbox"/> the calculation and reporting of the SCR is an onerous part of the Solvency II regime for insurers. For many IORPs that are a fraction of the size of the average insurer, with limited governance budgets, it would be disproportionate <p>We believe that the focus of the regime should be to set an appropriately-prudent long-term technical provisions target, with a flexible (but rigorous) approach to reaching the target implemented by national regulators.</p> <p>We consider that flexibility is required to recognise the very significant differences inherent in the national pension systems across the EU. If flexibility is not built into the new regime, then the objective of harmonisation could well be at the expense of sustainability of pension provision through IORPs</p> <p>Furthermore, we would caution against following a regulatory direction towards Solvency II for IORPs when the principles for insurers have yet to be finalised, and remain untested in practice.</p> <p>Proportionality</p>	
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			<p>There are more than 140,000 IORPs across the Member States, with Ireland having more than 80,000 IORPs and the United Kingdom more than 55,000, most of which have a small number of members/participants. The application of proportionality in operating risk-based principles is therefore of critical importance. It is also important that the measure of what is 'proportionate' should recognise the scale and resources available to IORPs of various sizes.</p> <p>A further point in relation to proportionality is the extent to which precise harmonisation of solvency requirements is practical or achievable, taking into account the huge variety of pension promises in IORPs across Member States. Such promises have developed in the context of the current and past social policy of each Member State. If such differences are to be recognised in a new solvency regime, then it seems unlikely that an objective of close comparability in the detail can be appropriate. That is not to say that consistency of approach across the EU is not desirable, but that a proportionate approach is needed to reflect fundamental differences in pension provision in different Members States.</p> <p>Robust, quantified impact assessments</p> <p>As has long been called for and acknowledged by EIOPA in the consultation document, full and detailed impact assessments - both qualitative and quantitative - are essential. It is also vital that the macro-economic effect on markets, employing entities, growth and jobs in the EU is assessed, in addition to a specific analysis of the benefits to members and the associated costs of implementing and operating the new Directive.</p> <p>Underpinning an impact assessment, we consider it would be helpful for the Commission to define how it will measure the success of the IORP Directive review.</p>	
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			<p>In addition to a full macro-economic analysis, given the complexities of the issues under consideration and the diversity of pillar 2 provision across Member States, we suggest that there are at least two separate strands of the proposals that should be separately reviewed.</p> <p><input type="checkbox"/> The first relates to those matters directly affecting cross-border provision; the definition of cross-border activity and the specification of what does or does not constitute prudential regulation.</p> <p>In doing so, we urge the Commission and EIOPA to obtain data from existing cross-border arrangements to assess what financial and other benefits have been obtained from carrying out cross-border activity compared with operating separate 'local' plans.</p> <p><input type="checkbox"/> The second is the risk-based supervisory regime. In fact, it would be preferable to sub-divide the quantitative impact assessments to show separately an analysis of implementing (i) the capital requirement proposals (pillar I of Solvency II Directive) and (ii) the qualitative supervision and reporting requirements (pillars II and III).</p> <p>In assessing the potential benefits of a proliferation of cross-border IORPs, we consider that the starting point should be to obtain evidence from those IORPs that have become cross-border since the first IORP Directive to establish what cost savings or other benefits have been delivered.</p>	
138.	Towers Watson Deutschland GmbH	General comment	<p>We thank IOPA for the opportunity to comment on its draft Response for the EU Commission's Call for Advice on the review of the Pensions Directive.</p> <p>We point out that in respect of the upheavals in the financial markets since 2007, IORPs have not been the source or the transmitters of systemic risk but rather the victims thereof. Although we agree in principle that it is appropriate to review the Directive, the importance of IORPs for both the citizens of the EEA and the financial markets should make it obvious that the preparatory work leading to any amendments to the Directive must be circumspect (or holistic) in</p>	Noted

			<p>nature. We therefore very much support the exposure this draft advice is being given.</p> <p>We challenge the central assumption taken by both the Commission and EIOPA in the development of the revised Directive, namely that insurance and pensions business is so similar, that the same principles for regulation can be used as a starting point. We believe that an IORP's business model, ownership structure, risk profiles and legal framework it is subject to, are sufficiently different from those of an insurer so as to warrant a fundamentally different regulatory regime. We therefore strongly recommend to maintain the clear distinction between Article 17(1), 17(3) and sponsor-backed IORPs. We consider that most IORPs - in particular single-sponsor IORPs - are sufficiently different from insurers to justify a fundamentally different regulatory regime.</p> <p>As a consequence we recommend in the following that Solvency II capital requirements should not be adopted to sponsor-backed IORPs and that the holistic balance sheet approach should be applied (if at all) in a differentiated manner – otherwise it would not reflect the diversity of European IORPs. In particular, we believe that the holistic balance sheet approach will only meet the characteristics of sponsor-backed IORPs and to some extent Article 17 (3) IORPs, if the sponsor covenant together with a pension protection scheme are applied to cover effectively all liability positions on the holistic balance sheet.</p>	
139.	Trades Union Congress (TUC)	General comment	<p>The Trades Union Congress (TUC) represents 55 trade unions and more than six million members working in a wide range of organisations, sectors and occupations. The TUC is also a member of the European Trades Union Congress (ETUC). The TUC supports high-quality pension schemes and we believe that everyone should retire with an adequate and secure pension.</p>	<p>Noted</p> <p>The importance of impact assessment and the position in respect of a quantitative impact</p>

		<p>We welcome the opportunity to comment on this consultation. There is a broad consensus among the UK's social partners about the adverse impact the proposals to revise the Institutions for Occupational Retirement Provision (IORP) Directive could have on the EU economy and UK's occupational pension schemes. Given the shared views among UK stakeholders this response does not go into technical detail. Rather, we examine issues of particular concern.</p> <p>We would also like to add that the significant length of such an important consultation should have merited a longer consultation period. Given the circumstances we have submitted a shorter response than we would have liked to have perhaps done so.</p> <p>The TUC is concerned that there is no full impact assessment attached to this consultation and that the impact assessment will not be published until after this consultation closes. Indeed, we understand that when an impact assessment is published it will not examine all aspects of the consultation. This makes responding to the consultation in an informed manner problematic. Furthermore, without a full impact assessment we query how revisions to the IORP Directive can be proposed in the consultation as they lack full evidence demonstrating the necessity for any changes.</p> <p>We note that any reforms to the IORP Directive concern the UK and the Netherlands disproportionality, given that they account for 85 per cent of defined benefit liabilities. There must therefore be a consideration of proportionality and flexibility in considering any possible reforms to the EU pensions system.</p> <p>The TUC is very concerned about the potential impact the review of the IORP Directive could have on occupational pension schemes and its wider economic implications.</p>	<p>study is described in the introductory chapter</p> <p>The existence of pension protection schemes in some member states is recognised in the introductory chapter</p> <p>The point about lack of demand and differences in social and labour law being factors in the lack of cross-border schemes is recorded in the introductory chapter</p> <p>The point about the greater length of pension fund liabilities has been recorded in the introductory chapter</p>
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			<p>We are concerned that the European Commission has asked EIOPA how scheme funding requirements should be further harmonised, not whether they should be. The application of Solvency II Directive-derived rules could have serious implications for defined benefit pension schemes by significantly increasing scheme liabilities by 20-30 per cent (over £100bn in total). Valuing technical provisions on a risk-free rate basis could place greater pressure on schemes and ultimately lead to a high level of scheme closures, thereby resulting in fewer benefits for scheme members and undermining retirement provision. This would result in people either having no pension provision, or if they are lucky enough to have alternative provision, being far more likely to be a member of a defined contribution scheme where members are exposed to risks and pensions are usually less generous.</p> <p>A solvency regime similar to that required by financial service companies providing insurance schemes is not the same as that required by defined benefit pension schemes that have long-term predictable liabilities and are backed by a participating employer. The UK already has a robust system of member protection in place for defined benefit schemes underpinned by the employer covenant, the work of the Pensions Regulator and the Pension Protection Fund, as the safety net of last resort. Given the diversity of pension provision across the EU, we believe the application of a harmonised Solvency II-derived regulatory framework to insurers and funded occupational pension schemes is both undeliverable and undesirable.</p> <p>We are also concerned about the adverse impact a revised IORP Directive could have on the EU economy. Given the current European economic situation the potential impact of a revised IORP Directive could be particularly unwelcome. De-risking of investment portfolios, as pension schemes move from equities to risk-free investments could negatively impact on economic growth, investment and destabilise capital markets.</p>	
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			<p>If the Commission truly believes a revised IORP Directive is strictly necessary, EIOPA should advise the Commission to limit its review to only Pillar II and Pillar III issues: to governance and transparency matters only. The TUC supports strong member protection, good scheme governance and disclosure requirements.</p> <p>In relation to our earlier point about the lack of an impact assessment accompanying the consultation, we also believe that EIOPA should press the Commission to provide detailed evidence to demonstrate the case as for why the IORP Directive needs reforming to facilitate cross-border pension schemes. At present there are only 84 cross-border IORPs of around 140,000 IORPs in the EU. The Commission and EIOPA have provided no detailed evidence demonstrating why the legislation should be amended. Our view is that the low number of cross-border schemes is not due to the wording of the Directive needing to be changed. Rather, it is due to lack of demand, and the different pension systems and tax regimes that exist in Member States.</p>	
140.	Transport for London / TfL Pension Fund	General comment	<p>Transport for London (TfL) is the integrated body responsible for the UK capital's transport system. It is accountable for both the planning and delivery of transport facilities. TfL is directed by a management board whose Members are appointed by the Mayor of London who chairs the Board.</p> <p>The majority of TfL staff belong to TfL Pension Fund ("the Fund") which is a defined benefit arrangement. The Fund has 83,000 members and assets of over £5 billion (Euro 6 billion) putting it in the top 30 of UK pension plans.</p>	Noted
141.	UK Association of Pension Lawyers	General comment	<p>A: Introduction:</p> <p>This document sets out the comments of the UK Association of Pension Lawyers of the United Kingdom (the "APL") on the EIOPA Response to Call for Advice on the review of Directive 2003/41/EC: second consultation. The APL represents members of the UK legal profession with a particular interest in pensions.</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the</p>

		<p>Currently it has over 1100 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.</p> <p>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.</p> <p>B: General comments</p> <p>We have a number of general concerns with the approach taken in the Response. Our key concerns relate to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the complexity of the approach and the very significant additional regulatory burden that many of the proposals under consideration would impose on IORPs and their sponsors – see (1) below; <input type="checkbox"/> the assumption that the Solvency II Directive is an appropriate benchmark to use in the regulation of IORPs, and that some degree of harmonisation between IORPs and insurance companies is necessary or appropriate – see (2) below; <input type="checkbox"/> the potential economic impact of Solvency II, which seems to have been given little or no consideration – see (3) below; <input type="checkbox"/> the disproportionate impact that the proposals would have on a small number of Member States, in particular the UK and the Netherlands – see (4) below; and <input type="checkbox"/> given that it appears that book reserve pension schemes would remain exempt from the requirements of the Directive, the possibility that the UK would put in place an opt-out mechanism allowing sponsors of IORPs to shift their 	<p>introductory chapter</p> <p>The point about involvement of social partners in the governance of IORPs has been recorded in the introductory chapter</p>
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		<p>pension obligations from IORPs to book reserve arrangements – see (5) below.</p> <p>(1) Complexity of approach and additional regulatory burden</p> <p>The complexity of the approach under consideration is illustrated by the fact that the consultation document sets out only fairly broad suggestions, but nevertheless runs to over 500 pages. Actual implementing work is likely to be difficult and costly for national legislators and affected IORPs, and ongoing compliance with a regime that included the key elements of the proposed approach would impose a significant continuing cost burden on the resources of IORPs and their sponsors. However, we have yet to see any real evidence that a sensible cost/benefit analysis has been carried out as to whether the steps envisaged are genuinely necessary.</p> <p>As we noted in our response to the first consultation on the Response to the Call for Advice, every additional layer of regulation in what is, at least in the UK, already an extremely well to over regulated area, imposes additional cost burdens. Every additional Euro or Pound spent on compliance with additional regulations puts up the cost of occupational pension provision by a Euro or a Pound and reduces the amount that can be spent on retirement benefits. We consider that the burden of proof should lie with those proposing additional regulations for pension funds to show that the additional regulation adds real value. In general, we do not believe that the proposed additional level of regulation will add real value (as distinct from theoretical value in a non-commercial environment). It should also be noted that, at a time of severe financial pressure on economies in the European Union, unnecessary additional regulation is difficult to justify. (See (3) below in particular for comments on the likelihood that applying Solvency II will have a negative impact on economic growth.)</p> <p>We would like to emphasise that the sheer complexity of the document makes it very difficult to analyse all the likely practical consequences of implementing the measures that are under consideration. We would strongly urge EIOPA to reconsider the need for additional regulation, and to press the Commission to do the same.</p>	
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		<p>(2) Use of Solvency II Directive as a benchmark and desirability of harmonisation between IORPs and insurance companies</p> <p>We remain very concerned that an assumption has been made in advance that Solvency II is an appropriate benchmark to use in the regulation of IORPs, and more broadly that IORPs should be treated like insurance companies unless very good reasons can be found to the contrary. That assumption is in our view misplaced.</p> <p>As we noted in our response to the first consultation on the Response to the Call for Advice, to argue in favour of harmonisation between these arrangements confuses 2 concepts:</p> <ul style="list-style-type: none"> (a) the concept of the insurance company operated for profit, and (b) the concept of the IORP established on a not-for-profit basis by employers to provide retirement benefits for their employees. <p>In the UK, IORPs established by employers are non-trading, cannot themselves decide to expand their activities by entering new markets or admitting new members (or customers), cannot generally terminate their activities and do not provide a profit to shareholders. These IORPs do not (and, under the terms of their constitutional documents, generally cannot) “act in a manner similar to insurance companies” (in the sense discussed at paragraph 10.3.20 of the consultation document). Many IORPs are in fact customers of insurance companies not competitors. It is not appropriate to impose Solvency II requirements on those who are not competing (and indeed cannot compete) with insurance companies. A ‘level playing field’ is not required for non-trading IORPs, because they are not ‘players’ and are not ‘in the field’. The rules intended to support the single market in financial services should only apply to those who are or could be market participants.</p> <p>Unlike insurance companies, UK IORPs are required by legislation to arrange that their governing trustee boards are composed of at least one-third member nominated directors or trustees (with some very limited exceptions for very small schemes or if there is a wholly independent trustee). Furthermore, subject to UK legislative constraints, the governing documents (trust deeds) of</p>	
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		<p>UK IORPs often include benefit adjustment mechanisms of the type referred to in the Annex to the consultation at Section 10.7.</p> <p>What is also clear beyond doubt is that, if UK defined benefit pension schemes have to be funded like insurance companies, then they would either not exist or would not provide anywhere near the level of benefits which they currently provide. In other words, there is a trade-off between sustainability, affordability and adequacy on the one hand and security on the other hand.</p> <p>Furthermore, the imposition of a Solvency II-type regime for IORPs would also entail major changes to the liabilities and responsibilities of IORPs (or their trustees) and their employer sponsors, and would be likely to have a material impact on continued benefit provision to existing IORP members. Any intervention with existing or acquired rights amongst private parties on such a scale requires strong justification. That justification may exist at national levels but not at European Union level.</p> <p>We have seen no case made that there is any major defect in the existing systems of regulation for IORPs. No real analysis has been done to justify why insurance company regulatory requirements should be applied to IORPs.</p> <p>We understand that much of the pressure to treat IORPs in the same way as insurance companies comes from countries where either there are no IORPs or IORPs are not the dominant method of pension provision. The UK Government and other organisations, including those that may be viewed as corresponding to the "UK Government's Social Partners", oppose the suggestion that Solvency II is an appropriate benchmark for the regulation of IORPs. We refer EIOPA to the comments of those organisations, as summarised in the introductory comments to the first consultation on the Response to the Call for Advice. We also note the remarkable consistency with which a very diverse group of UK stakeholders oppose the approach of using Solvency II as a benchmark and the proposal to harmonise the treatment of IORPs and insurers.</p> <p>As can be seen from the above, we do not see where the European Commission</p>	
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		<p>considers it derives any mandate to propose that IORPs should be regulated via a Solvency II-type approach.</p> <p>A number of the questions in the consultation addressed points of detail relating to how a Solvency II-type framework could be reflected in valuation and funding requirements for IORPs (see in particular questions 13 to 33). In the interests of providing EIOPA with a UK technical legal perspective on these matters, we have provided comments in response to these questions on aspects of these points of detail. However, we should make it clear that a number of members of our committee had serious reservations about including comments on these particular questions, insofar as it could be seen as implicitly supporting a proposal which we consider fundamentally flawed. The fact of our having commented on the specifics of these questions should not be interpreted as our having given explicit or implicit support to the core premise of applying Solvency II to the generality of IORPs, and those comments can only be viewed as initial thoughts in the absence of further consultation on the potential economic effects of Solvency II (see the concerns raised in part (3) of these general comments below), and indeed in the absence of an opportunity to carry out a more detailed technical analysis of the proposals under consideration and of the likely practical consequences of implementing them (see the comments made in the last paragraph of part (1) of these general comments above).</p> <p>(3) Economic impact of Solvency II</p> <p>A critical concern is the likelihood that Solvency II will entail such a substantial increase in the cost of providing pension benefits and funding IORPs, that it may (through the diversion of a very significant amount of capital from other business needs and from shareholders) have a major negative impact on the ability of companies that sponsor IORPs to raise equity and debt finance and invest in their businesses. This in turn would have major negative implications for economic growth. The responses of a number of UK stakeholders to the EC Green Paper and to the first consultation on the Response to the CfA have made these points strongly and they must be taken into account in any credible analysis of the options that are available.</p> <p>Because applying Solvency II would have a disproportionate impact on</p>	
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		<p>businesses in some parts of the European Union (see (4) below)) this step would amount to legislating to undermine the competitiveness of businesses in those jurisdictions.</p> <p>Before any serious consideration can be given to the imposition of Solvency II on IORPs, the only responsible course would be to carry out a further consultation based on a detailed cost/benefit analysis including the implications for raising capital for new business and expanding existing business and the implications for economic growth and for expansion of employment (in particular for young people who are less likely to benefit from IORPs). Detailed feedback and analysis should be available from such an exercise to inform deliberations on policy before meaningful comment can be provided on any proposals to change the IORP Directive.</p> <p>(4) Disproportionate impact on those Member States that have IORPs</p> <p>We emphasise once more that the proposed additional regulation of IORPs will have a disproportionate impact on the UK and the Netherlands. As noted in our response to the first consultation on the Response to the Call for Advice, based on the available statistical information we have been able to find, it would appear that 2 EU Member States, the Netherlands and the United Kingdom, between them have IORPs which represent over 75% by value of the assets of IORPs established in the EU. See Appendix 1. A similar conclusion flows from a survey carried out by Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), which concluded that, with regard to Defined Benefit Schemes, in 2006:</p> <ul style="list-style-type: none"> <input type="checkbox"/> UK IORPs represented 43% of premiums and 61% of Technical Provisions in Europe; and <input type="checkbox"/> IORPs in the Netherland represented 30% of premiums and 24% of Technical provisions in Europe. <p>Note: Please see Appendix 1.</p>	
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			<p>pension provision than IORPs) less attractive to sponsors than IORPs, which would be a perverse outcome – see our response to question 1 on this point.</p> <p>(5) Option for the UK to opt-out</p> <p>We note that one option for the UK would be to alter its legislation so that:</p> <p>(a) employers could elect to assume the pension obligations of their pension funds so that they become direct obligations on a book reserve basis, and</p> <p>(b) the assets of the pension fund could then be transferred to a security trustee and hypothecated in favour of the beneficiaries to secure the performance of the pension promise by the employer.</p> <p>Such an arrangement would then take UK IORPs outside of the scope of the IORP Directive and put UK pension arrangements in the same position as book reserve schemes operated by German companies (often supported by contractual trust arrangements by way of hypothecation for the book reserve obligations).</p> <p>Such an approach may well be viewed as being in the UK’s national interest, given, as noted above, the materiality of UK IORPs relative to those of other EU Member States and the likelihood that applying Solvency II would have a negative impact on the competitiveness of UK businesses, economic growth and second pillar pension provision.</p>	
142.	UNI Europa	General comment	<p>1. UNI EUROPA is concerned that the consultation period on such a complicated and highly technical topic with massive long-term impact is taking place within such a short time frame. It might influence the quality and quantity of responses. The given format with specific questions is not ideal and limits us as respondents. In some instances proposals are made but no specific questions are put forward. We might not agree with all these proposals.</p> <p>2. Second-tier retirement provisions are primarily the domain of social partners and the regulation the domain of Member States. The subsidiarity principle must be applied. EU regulation might help strengthen weak pension systems but also disturb tailor-made best practices. Extreme financial and</p>	<p>Noted</p> <p>The point about the not-for-profit nature of many IORPs is recorded in the introductory chapter</p>

			<p>administrative demands on pension funds risk raising the operational costs to unacceptable levels.</p> <p>A level playing field between operators is often brought forward as one of the objectives that should be achieved. In most Member States, IORPs are non-for profit institutions established by social partners for the sole and unique purpose to manage the occupational pension in the best interest of the pension plan members and the beneficiaries (spouses, orphans, etc.). In many Member States they have their own specific adjustment and security mechanisms, very different from the way commercial insurers operate. And last but not least, many pension funds have a form of democratic control. Their activities are fundamentally different to that of a commercial undertaking, and should therefore not be treated in the same way.</p> <p>3. If all of the proposals/advice given by EIOPA was to be put into practice it would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financial cost for the scheme's sponsor(s).</p> <p>4. A review of the IORP directive cannot be handled separately from other initiatives from the Commission with respect to pension policy. The review as it is presented through the questionnaire also touches upon issues like the organisation of social protection, which are of a political nature.</p> <p>5. The purpose of the regulation should be the facilitation of existing good pension schemes for European workers and citizens. In a number of Member states pension schemes have existed for a long time. They are regulated and function well, and have a good track record of delivering pensions for successive generations. The aim of the directive should not be to introduce new regulations to systems that function well in Member States that already have a sound regulation in place.</p> <p>6. It is of the utmost importance that the freedom of social partners to negotiate occupational pensions is not hampered.</p>	
143.	Universities Superannatio	General comment	This response is from the trustee of Universities Superannuation Scheme (USS), which is the second largest defined benefit occupational pension scheme in the	Noted The existence of

	<p>n Scheme (USS),</p>		<p>United Kingdom. USS is a scheme that provides benefits to more than a quarter of a million current and former employees within the UK's higher education sector, with participating employers that include some of the world's most prestigious universities. The scheme has assets of more than £30 billion (€36 billion).</p> <p>In responding to EIOPA's draft response to the Call for Advice from the European Commission on proposed changes to the IORP Directive (2003 / 41 / EC), we firstly wish to make clear our opposition to the proposed new quantitative requirements for the funding of IORPs, and in particular revised rules for the calculation of technical provisions and the determination of other additional capital requirements. The funding arrangements for defined benefit pension schemes in the UK, which are derived from those requirements set out presently in the IORP directive, have enhanced the way that pension commitments are funded and provided for, and this funding regime – whilst presenting many challenges for scheme trustees and their employer sponsors – works effectively. The Directive enables national supervisors to implement funding arrangements which are specific to their national structures, which is entirely appropriate for defined benefit occupational pension schemes where arrangements differ substantially between different countries.</p> <p>USS is therefore opposed to the proposed changes, which are likely to be ruinous for defined benefit pension schemes operating in the UK, which together contain over £1,007 billion (€1,207 billion) of pension fund assets. The changes are unnecessary, as there are already substantial national arrangements in place for the funding of these schemes. Worse still, the entire proposal to introduce more demanding funding standards as well as new capital requirements under the Solvency II-style funding approach seems to be based on a fundamental misunderstanding that a "level playing field" is necessary between defined benefit pension schemes and insurers. This flawed ideology fails to recognise the particular structure and design of defined benefit schemes in those EU states (which include the UK and a small number of other states)</p>	<p>pension protection schemes in some member states is recognised in the introductory chapter</p>
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		<p>which have a sponsoring employer (or employers) that provides the ultimate funding guarantee for the pension scheme in the event that additional financing is required. In addition, a substantial protection scheme exists in the UK to guard against the insolvency of the sponsoring employer(s). These arrangements make DB pension schemes in the UK fundamentally different to insurance undertakings, and the intended application of similar funding arrangements is patently inappropriate.</p> <p>The proposals have the potential to do terminal damage to UK defined benefit pension schemes and to their sponsoring employers. These consequences include the social consequences of the poorer supplemental pension provision that will result as employers retreat from providing all but the minimum pension schemes for their employees. There will also be very significant economic effects. In a report commissioned by USS in conjunction with the UK's National Association of Pension Funds, Europe Economics, the highly respected and independent economic analyst, estimates that the requirement to provide additional funding to IORPs within the UK is likely to result in an impact of between 1.0% and 13.3% of Gross Domestic Product (GDP) over the first five years of any new Solvency II-style funding arrangement, as the sponsoring employers of pension schemes are obliged to direct additional funding into their pension schemes rather than into business and economic growth. It should be noted that this analysis an assessment of the impact of simply the additional requirements to move to a risk-free measure of technical provisions.</p> <p>This reduction in GDP will have an extremely damaging impact upon jobs, with an estimate from the Europe Economics analysis of between 796,000 and 2,840,000 in the period to 2023 due to the very harmful impact on company growth and prosperity.</p> <p>The economic effects described above are for the UK, and whilst other countries do not have the same number or volume of defined benefit pension schemes,</p>	
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		<p>there would still be potentially disastrous consequences for other economies across Europe.</p> <p>The draft response from EIOPA to the European Commission proposes the adoption of a holistic balance sheet approach to new funding arrangements, in which the 'assets' of the IORP are taken to include the value of the sponsor covenant and of any protection schemes (such as the Pension Protection Fund in the UK). We are concerned that EIOPA's draft response provides no clue as to how these mechanism would be valued and therefore, even if the holistic balance sheet proposal were acceptable as a principle (which it is not, in our view), it would be impossible to express any clear view about it beyond that first principle. EIOPA should make this known to the Commission as part of its response with a further consultation with complete information if it is intended to consider these proposals further</p> <p>Despite our fundamental concerns expressed above, we have nevertheless completed appropriate sections of the draft response document, and we hope that our responses are helpful to EIOPA.</p> <p>Impact assessment</p> <p>This review of the IORP Directive raises complex issues and could have an impact on EU pension provision for many generations to come. It is imperative that the policy-making process is thorough and carefully considered.</p> <p>USS is very concerned that the review has been allowed to develop to the current, very detailed, level without any accompanying impact assessment. Although EIOPA has now asked the Group Consultatif Actuariel Europeen to contribute to the impact assessment work, it appears that this work will not be concluded until relatively late in the policy-making process.</p>	
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			<p>USS would suggest that impact assessment should be an integral part of the policy development process. The assessment should be drafted and expanded alongside advice on the new Directive, so that it can inform high-quality policy-making.</p> <p>EIOPA and the European Commission should also take time to get the detail right. The current – very short – consultation period does not indicate the necessary commitment to a careful consideration of all the issues.</p>	
144.	vbw – Vereinigung der Bayerischen Wirtschaft e. V.	General comment	<p>The review of the Directive on Institutions for Occupational Retirement Provision (IORP directive) calls for special prudence, not least against the background that the most recent amendment has been implemented only in the last years by all member states. We would like to point out, that in particular, capital adequacy requirements (“Solvency II”) should not be transposed into the IORP directive. Imposition of these requirements would cause great harm to institutions for occupational retirement provision (IORPs) and subscriber companies, and would markedly reduce the readiness of employers to enter into occupational pension commitments. This would run diametrically counter to the need to expand and strengthen occupational pension provision. Incorporation of Solvency II would ignore the risks faced by IORPs in terms of subsidiary employer liability as well as of insolvency cover by the pension protection association (Pensions-Sicherungs-Verein - PSV). In particular the last finance crisis in 2009 showed, that the legal framework of the finance authority stood the test.</p> <p>The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned</p>	Noted

			and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.	
145.	Verband der Firmenpensionskassen (VFPK) e.V.	General comment	<p>The Association of Corporate Pension Funds (Verband der Firmenpensionskassen VFPK e.V.) is the advocacy group of the regulated corporate pension funds in Germany. The association members represent more than 4,200 affiliated sponsoring enterprises in which more than 1.2 million employees and about 270,000 pensioners are insured in the member funds.</p> <p>The following comments represent the opinion of the VFPK members on the questions EIOPA invited us to comment on.</p> <p>Contact: geschaeftsstelle@vfpk.de</p>	Noted
146.	Verbond van Verzekeraars	General comment	<p>The Dutch Association of Insurers (Verbond van Verzekeraars, VvV) welcomes the Call for Advice on the review of Directive 2003/41/EC.</p> <p>The Dutch Association of Insurers represents the interests of private insurance companies operating in the Netherlands. The Association's members represent more than 95 percent of the Dutch insurance market expressed in terms of premium turnover, which in 2010 was € 78 milliard. In 2010, Dutch insurance companies employed 57.000 people and invested € 356 milliard in the economy.</p> <p>The Dutch insurance companies are important providers of pension products. They account for an annual premium turnover in the 2nd Pillar of about €7,65bn (2009). As the total premium income of the 2nd Pillar in the Dutch pensions market is about €38bn, the insurers account for 20% of the 2nd Pillar market. The pension products of insurers are subject to similar social and labour laws as</p>	<p>That occupational pensions business carried on by insurers also has a social and employment context has been added to the advice.</p> <p>Position on same risks, same rules, same capital and substance over form has been recorded in the introductory chapter.</p> <p>Noted</p>

			<p>those of IORP's and Insurers are operating within a social context as well.</p> <p>The Solvency II principles should serve as the basis for regulating financial institutions providing occupational pension products. Not the legal vehicle should determine the level of protection towards members and beneficiaries, but the risks related to the different pension products. Economically significant characteristics of the different pension products or schemes should consequently be taken into account. However, these differences should be fully transparent and explicitly communicated towards the (future) members and beneficiaries of the concerning pension products.</p> <p>According to the 5th quantitative impact study of the Solvency II framework, some of the aspects related to the areas of long term guarantees, are not suitable for occupational pension products. Therefore it is necessary to aim for appropriate solutions in both the IORP and the Solvency II Framework.</p> <p>As a member of the CEA, the Dutch Association of Insurers supports the CEA response on the Call for Advice on the review of Directive 2003/41/EC. In case questions are not answered in this document, we refer to the CEA statement.</p>	<p>The point about the interaction with first pillar pensions has been recorded in the introductory chapter</p>
147.	VHP2 (Vakorganisatie voor middelbaar en hoger pers)	General comment	<p>Comments by the VHP2 on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')</p> <p>Preamble</p> <p>These General comments by the Vakorganisatie voor middelbaar en hoger personeel in de technologische sector [VHP2] on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the VHP2 refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [Pensioenfederatie], see answers 1 to 91 for these technical details of the Pensioenfederatie. In the present response, VHP2 will provide more general</p>	

		<p>comments on EIOPA’s Consultation Paper. The main conclusions are:</p> <ol style="list-style-type: none"> 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the national pension systems. This is in accordance with the European Commission’s principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework. 2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended. 3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States. 4. In the Netherlands, the social partners and the government have concluded a Pension Accord [Pensioenakkoord] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent ‘benefit adjustment mechanism’ for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate 	
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		<p>to this new type of contract. The Dutch supervisory system follows the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.</p> <p>5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the pension benefits in the Netherlands.</p> <p>6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.</p> <p>More general comments</p> <p>There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.</p>	
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			<p>Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people's pensions commence at a later date.</p> <p>Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.</p> <p>After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum.</p> <p>Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the</p>	
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		<p>assumptions made.</p> <p>In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years.</p> <p>Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord.</p> <p>In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.</p> <p>The VHP2 notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not</p>	
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		<p>to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round.</p> <p>The VHP2 is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions.</p> <p>Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results.</p> <p>Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency.</p> <p>Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly</p>	
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		<p>people in the Netherlands is very favourable when compared to that of their counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.</p> <p>The VHP2 also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.</p> <p>Finally, the VHP2 wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.</p> <p>A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national</p>	
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			<p>pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.</p> <p>Comments regarding the 'holistic balance sheet' proposed by EIOPA</p> <p>The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.</p> <p>Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.</p> <p>One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.</p> <p>A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.</p>	
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			<p>Final remarks</p> <p>The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.</p> <p>The following topics are important as regards an effective role for Europe in facilitating high-quality, sustainable pension provisions in the Member States, in line with the principle of subsidiarity:</p> <ul style="list-style-type: none"> <input type="checkbox"/> promoting the sustainability of the public finances of the EU Member States; <input type="checkbox"/> promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; <input type="checkbox"/> maintaining the tried-and-tested system of open coordination; <input type="checkbox"/> taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; <input type="checkbox"/> consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; <input type="checkbox"/> extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. 	
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148.	Whitbread Group PLC	General comment	<p>Whitbread Group PLC operates a UK trust based occupational pension scheme with a defined benefits section and a defined contribution section.</p> <p>Whitbread takes seriously its responsibility for ensuring that the promised benefits of the scheme are provided and has in place a number of measures to provide financial support to the Trustees to properly fund the scheme. This is not unusual in the UK and is a very different framework from that of Insurance Companies, which are, of course, not supported by a sponsoring employer.</p> <p>Whitbread does not agree that a new version of the IORP directive is needed, nor that in its current form that it is a barrier to the growth of cross border pension schemes.</p> <p>Whitbread has reviewed the impact of the holistic balance sheet and believes that valuing Technical Provisions on a risk free basis would increase our funding requirement by around 50% (1,080m Euros). Clearly meeting such a requirement would have significant impact on our business and potentially on our ability to fund future pensions provision.</p>	Noted
149.	Zentraler Immobilien Ausschuss e.V. (German Proper	General comment	<p>Real estate is a unique asset class which provides diversification benefits that are essential for IORPs looking to match long term cash flows with long term investment needs of their policy holders. Real estate cash flows are the single largest pool of long dated cash flows in Europe and IORPs seek to access these return characteristics through many forms of direct and indirect vehicles. The nature of real estate as a capital intensive asset makes costs of capital a critical factor. If the equity costs for property investments will increase. IORPs will likely reduce their property investments. In such a scenario property disinvestments will have a negative impact on the European property market as a whole.</p>	Noted

<p>150.</p>	<p>Zusatzversorgungskasse des Baugewerbes AG</p>	<p>General comment</p>	<ol style="list-style-type: none"> 1. 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. 2. 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. <p>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 upfront 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.</p> <ol style="list-style-type: none"> 3. Multiemployer DB schemes based on collective agreements that include solidarity elements like ours have to be treated very differently from individual insurance solutions. 	<p>Noted</p>
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