Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation		Deadline 02.01.2012 18:00 CET
Company name:	AFPEN (France)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public

The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- Do **not** change the numbering in column "Question".
- Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions.
- Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
    - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
    - If your comment refers to parts of a question, please indicate this in the comment itself.

Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).

Question	Comment	
General comment	**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.** Firstly, we have to specify the following points : we thought about the EIOPA's consultation with a large number of retirtement savings players and specially with a group of 7 CAC 40 companies being involved in various pension systems in Europe and internationally (sponsors). We want to draw the attention of the EIOPA on the observations preliminary following ones, resulting from these companies : "- *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* *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 :* *- 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* *- 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 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."*	
1.	AFPEN agrees to EIOPA's analysis.	
2.	AFPEN does not see any further option to be considered. Since EIOPA has already tabled this issue at the first consultation in July 2011 with five options including two further suboptions, AFPEN is of the opinion that EIOPA has covered all conceivable possibilities although it has to be admitted that due to the 140,000 pension institutions in the 27 EU Member States, their different embedding into the	

	national pension framework and the still unsolved "pillar-classification", some pension schemes might still not be covered by these different options.	
3.	AFPEN is in favour of option 1 and hence in line with EIOPA's conclusion in EIOPA's advice under n° 4.5 that "the current scope of the IORP directive is not to be extended". With respect to this examination, AFPEN believes that option 1 would be the best solution since in contrast to the other options 2 and 3, it has got no negative impacts. Even though option 1 offers not advantages, AFPEN, however, wonders whether the positive impacts of options 2 and 3 are really advantages for all involved persons and institutions. Regarding option 2, the mere enlargement of the scope of the IORP Directive does not constitute an advantage per se. Furthermore, the choice of Member States whether to apply the IORP Directive on a voluntary basis is already possible under the current legislation as EIOPA has identified in 4.3.25. Regarding option 3, AFPEN does not believe that the enlargement to all funded schemes would constitute a positive impact. AFPEN is rather of the opinion that this would be a disadvantage since this would imply to remove the reference to "occupational" as EIOPA has underlined in 4.2.29 since it would change basically the character of the IORP Directive	
4.	AFPEN agrees with EIOPA's findings under n° 4.3.26 according to which such borderline cases might later be covered by the national legislator in transferring the revised IORP Directive. AFPEN believes that especially due to the experience after the last financial crisis, beneficiaries' protection is of paramount interest both for the Member States and social partners. Therefore, AFPEN is of the opinion that such border line cases will be responsibly treated by transferring the revised IORP Directive into national legislation without any further EU legislation being necessary. As stated above the scope of the directive has to limit itself retired collective where there is a sponsor / employer who makes a commitment in the implementation of the plan.	
5.	To frame the definition of the activity cross to line AFPEN considers there is three entities: the sponsor of the fund, the fund and / populations of employees in geographical et local situations, with contract of employment referring to the labor law. All this must be considered in order to be able to set up a compartment in the fund (but see the next point about ring-fencing) with respects the applicable legislations) covered. If one of these entities is in another country then it is about an activity cross of lining.	
6.	Afpen agrees with EIOPA's position in order to clarify the scope of ring-fencing.	

7.	The notion of compartment (ring-fencing) is a little indistinct because it recovers purely administrative operations and also a legal organization which separates the operations and the assets concerned. AFPEN wants to point that the wished protection by an administrative ring-fencing is unrealistic in case of underfunding of the pension scheme. Only a legal ring-fencing is able to bring a real guarantee.	
8.	AFPEN agrees with EIOPA's position to make ring-fencing obligatory in case of cross-border activity.	
9.	AFPEN agrees to increase member protection with privilege rules.	
10.		
11.		
12.	The main problem of the Holistic Balance Sheet is that it contains the essential aspects of the solvency II regime, i.e. the "mark-to-market" criteria for the valuation of assets and liabilities, a risk-sensitive calculation of the solvency capital requirement as the value-at-risk with a 1-year-horizon and a security level of 99,5%. The main problems related to these concepts are: ☐ very high capital requirements due to the long duration of liabilities, guaranteed benefits and the IORP typical duration mismatch of assets and liabilities because of the longer duration of liabilities compared to assets ☐ very high capital requirements in times of low interest rates ☐ volatile and arbitrary capital requirements in times of fragile financial markets (interest rates, equity markets,…) ☐ the long-term risk diversification behavior of IORPs is limited by the 1-year-horizon of the standard formula ☐ to high capital requirements due to the 1-year-horizon given the long duration of liabilities and the	

	marginal relevance of short term fluctuations ☐ implementing the solvency II structure and accomplishing all the legal and IT requirements is related to high additional financial costs and manpower efforts In the end the sum of the ingredients of solvency II will have serious consequences. The requirements of pillar I and III suffice to account for severe or even life-threatening difficulties for some IORPs with respect to handling the organizational and financing the capital requirements due to the existing retirement provisions. Forcing them to accomplish all the capital, legal and IT requirements following the solvency II framework will lead to rising cost. This will in turn reduce the benefits for existing retirement provisions and / or increase the need of additional financial contributions of the sponsoring undertaking. In the medium-term a changeover from defined-benefit- to defined-contribution-schemes due to excessive demands in defined-benefit-schemes is very likely. The effect is a risk transfer from the IORP respectively the sponsoring undertaking to the employee. Or–even worse–this process leads to an entire termination of occupational pension covenants and the disappearance of IORPs. These consequences stand in direct contrast to the political objective target of securing retirement provisions and are surely not intended to be the outcome of a revised IROP Regulation. To sum up this all together makes up for a veritable and unintended paradox of the solvency II regulation approach. If for security reasons the capital requirements for IORPs increase in the end the employee is cursed for his own future security. In other words: to avoid unlikely benefit reductions in the future we accept definite benefit reductions in the present! With the Holistic Balance Sheet (HBS) EIOPA tries to cope with the problems mentioned above by taking into account some special characteristics of IORPs. This is done by integrating two additional assets–additional financial contributions of the employer and the pension protection schemes–as well as the possibility to reduce liabilities because of benefit reductions. But for the IORPs the HBS does	

not change the situation for the better for the following reasons:

1. Fundamental principles and problems of solvency II remain unchanged

The general principles of the solvency II and especially of pillar I remain unchanged. And therefore the implied consequences mentioned above ("mark-to-market" valuation, 1-year-horizon, volatility, arbitrariness, interest rate sensitivity, financial costs and manpower efforts,…) remain problematic as well. The HBS might indeed reduce the capital requirements for IORPs but at this point severe follow-up difficulties arise.

2. Concrete problems with the design of the HBS

The concrete design and functioning of the HBS creates various essential problems. If the additional "security mechanism" of IORPs are valued according to a "market-value", what is the concrete "market" value of the subsequent payments of the sponsor or a possible pension protection mechanism in place? How much is it "worth" to be able to reduce benefits in case of a financial emergency? Shall these assets be allowed to appear on the balance sheet already in the unstressed market-value balance sheet or only to cover the losses of stressed assets?

All these questions exemplify the immense difficulties due to a plausible valuation, tiering and bal-ancing of assets and the high degree of arbitrariness when it comes to quantifying these additional assets according to "market-values": there simply is no concrete balance sheet value due to the nature of these assets. So the attached values are highly arbitrary and therefore contradict the notion of a neutral, objective and informative balance sheet.

3. Are „new" assets „new" liabilities as well?

It is very likely that the concrete value of the additional assets will have to fill exactly that gap which

the IROPs face because of the changeover to the solvency II balance sheet. The difference is the outcome of the market valuation of assets and liabilities. So the seeming "market value" of the new assets is in the end predetermined by the increase in the capital requirements given the pillar I of solvency II which is described above.

And this leads to the successive problem: If these "new" assets enter the balance sheet of the IORP there "new" liability will also have enter the balance sheet of the sponsoring undertaking. Therefore the higher capital requirements of solvency II–as described above–will move to the balance sheets of the employers. Again, as AFPEN argued in the pure-Solvency-II-situation, the consequence would be the termination of occupational pension retirement provisions and the disappearance of many IORPs on a large scale.

4. The "Holistic Balance Sheet Paradox": Same security as before, but dramatic consequences?

After all AFPEN wants to point out the inherent paradox associated to the HBS: The security level for the employees is exactly the same as before! Economically speaking nothing changes, it is only a question of accounting and the interplay of IORPs and employers, as was argued above. But due to the dramatic rise in costs it is likely that this level of security is not affordable anymore!

To the contrary: In AFPEN's opinion, EIOPA has correctly identified existing security mechanisms which can be called upon in case of emergency so that the security of retirement provisions is guar-anteed. And EIOPA has in particular noticed the differences between IORPs and insurance undertakings. Additionally, AFPEN would like to mention some further distinctive features common to public sector IORPs that differentiate institutions of the so-called "second" and "third" pillar as far as benefit security is concerned:

• IORPs have got specific inbuilt security mechanisms that ensure the solvency position of pension schemes. In some pension schemes, contributions and the main benefit parameters can be modified

	by the employers and the employees' representatives. • Many pension schemes, especially of the public sector in the Netherlands, the Scandinavian countries or in Germany, foresee paritarian management. Paritarian management involves social partners in the Board of Directors of the IORP or in similar internal supervisory bodies. Due to paritarian representation, the interests both of the employers and of the employees and beneficiaries are well-balanced and the benefit security can therefore be ensured. • Due to the fact that IORPs in the public sector are Not-for-Profit-organizations the possibility of a potential trade-off between the aim "consumer protection" and profit maximizing behavior and dividend payments are minimized. • The long term investment horizon of IORPs and the impossibility of capital withdrawal (nearly no benefits before retirement) also strengthens benefit security. • For DB- and hybrid DB-/DC-schemes, in at least some Member States, employers have the ultimate responsibility for the fulfilment of the pension promise as additional benefit security mechanism. AFPEN‵s sum up: ☐ If the general idea of pillar I of solvency II is to prevent that IORPs are assured against exceptional emergency cases then this protection especially in case of public sector IORPs already exists because of the additional security mechanisms in place! ☐ If these mechanisms shall be quantified grave problems arise which essentially contradict the initial idea: only a pseudo-certainty and -precision given the arbitrariness of the valuation of additional security mechanisms as assets!	

☐ And: lots of (small) IORPs will be unable to cope with the immense plus in manpower and financial effort

☐ In the end: the existing security mechanisms today already safeguard with low cost exactly that level of security which shall be created with pretended quantitative precision in the new regula-tion regime for much higher cost (better case) if not for the price of termination of existing pen-sion scheme arrangements (worst case)!

UP-SHOT:

☐ Extreme effort & great uncertainty with respect to construction, valuation, etc. of the HBS!

☐ No security surplus for employees but higher cost for employers!

☐ AFPEN strongly opposes to the HBS in consideration of all these aspects!

Why the banking (Basel II/III) and the insurance (Solvency II) perspective is in general not the appropriate starting point for the regulation of IORPs!

The fundamental arguments for the regulation of the banking sector which became constitutive for the first pillar of the Basel II/III structure as well as for the Solvency II structure is as such not trans-ferable to the occupational pensions sector! It is very important to recall that these reasons arise because of specific characteristics of the banking and the insurance business; and only for these reasons high capital requirements available at short notice are necessary!

1. The problem of banking: term- and liquidity-transformation

The probably most central task of banking is the term- and liquidity-transformation, that is to say that banks use liquid short-term deposits to finance illiquid long-term credits and investments. The problem hereby stems from the fact that the bank has to manage its liquidity and solvency position in such a manner that the liquidity position corresponds to the short-term structure of the liabilities. This bears the possibility of sudden withdrawals of deposits to the point of bank-runs and insolvency due to illiquidity although the bank may still be economically healthy, systemic and macroeconomic risks arise in consequence because of the importance of credit and payment transactions. To avoid this problem banks are required to hold enough and risk-adjusted capital!

2. The problem of insurance: withstand a sudden change for the worst

The solvency capital requirement of Solvency II implements a more sophisticated capital requirement system in order to assure that insurances equipped with enough capital and liquidity at short notice to withstand sudden adverse developments and catastrophes such as storms, floods, car crashes or epidemics (see statements of the EU-Commission). Not only underwriting risks are covered any more by the capital requirements but also risks on the asset side, for instance market risks and credit risks, as well as operational risks. To assure the financial position of insurances against the background of sudden changes for the worst enough and risk-adjusted capital is required!

☐ IORPs are not facing these problems!

Both these problems are not especially relevant for IORPs as they are for banks and insurances. Central for the separate position of IORPs is the extreme long duration of liabilities due to retirement provisions. This implies two important consequences: 1. A virtual impossibility of capital withdrawals at short notice: Nearly no benefits are due before retirement. 2. This in turn enforces and protects

the long term investment horizon of IORPs.

Because of the long duration of liabilities also on the asset side long-term developments are more important than short-term fluctuations of markets or interest rates that have to be considered by banks, insurance companies and other financial companies: The duration of liabilities of those institutions is more uncertain and even endogenously affected in times of financial crisis (for instance for banks, short term investments or life insurance products with lump-sum option). This is not the case for IORPs. Given the long and stable duration of liabilities IORPs have a longer reaction period in case of adverse developments of the relevant risks. This has to be accounted for when calculating the capital requirements. A Value-at-risk-measure with a confidence level of 99.5% with a 1-year-perspective and the implied capital requirements is therefore not appropriate for IORPs and it is not necessary to hold the risk-sensitive solvency capital requirements of Solvency II in full at all times. This implies that IORPs need a different regulation perspective and regime sui generis!

☐ The banking or insurance perspective is in general not the appropriate starting point for the regulation of IORPs as they are not exposed to the same problems!

☐ Especially the capital requirements of Solvency's pillar I are not appropriate!

☐ Individual aspects are definitely adequate and useful (risk management requirements of pillar II and disclosure requirements of pillar III)

An alternative:

The "individual security and macro stability" perspective for regulating IORPs

In order to deliver constructive advice AFPEN wants to suggest a concrete proposal for the change of perspectives when thinking of a starting point for the regulation of IORPs. This also reflects the

Commissions Call for Advice directed to EIOPA in March 2011 and the idea of developing a supervisory regime sui generis for IORPs. AFPEN would like to underline two principles for the regulation of IORPs: individual security and macro stability.

1. The "individual security" aspect: enforcing the expansion of occupational pension

The first objective which the regulation of IORPs must intend is the notion of consumer protection or, in other words "individual security" as is very often accentuated by the European Parliament, the Commission and EIOPA. AFPEN absolutely agrees with this. The reason why AFPEN sees the necessity to separately enforce this point is that the realization of more security for employees / insurants is not necessarily related to the Solvency II structure and in particular not to the respective solvency capital requirement formula.

The HBS does not change the security level of pension schemes for the better it only makes them more expansive. As argued in length in the discussion of the HBS the notion of a precise quantification is flawed and leads to subsequent problems that essentially contradict the initial objective of comparability. Furthermore if IORPs and employers are forced to terminate the existing pension scheme arrangements due to the increase in financial effort because of the HBS this is definitely to refuse.

In contrast AFPEN would like to stress the fact that there actually exist sufficient security mechanisms which guarantee the security of occupational pensions. In AFPEN's opinion, EIOPA has correctly identified security mechanisms (e.g. 8.3.6.) and AFPEN stressed further distinctive features and specific inbuilt security mechanisms in particularly common to public sector IORPs. A brief recapitulation:

• sponsor support

• pension protection schemes

• benefit reductions

• long term investment horizon of IORPs and impossibility of capital withdrawal)

• paritarian management

• modification of main contribution and benefit parameters by employers and employees' representatives

• not-for-profit-organizations

In the end AFPEN wants to emphasize that all these points are already in place to assure benefit security. This opinion is endorsed by the findings of the OPC reports that showed a large variety of supervisory practice without unveiling any evident lack in security for beneficiaries. Therefore AFPEN suggests that the starting point for further improvements of the regulation of pensions schemes should be the status quo of the existing IORP regulation. An impulse for the direction of further enhancements is given in the chapter below.

2. The "macro stability" aspect: supporting long-term investment

The other notion, that should be central to the regulation of IORPs, could be named the "macro stability"-perspective. According to this perspective supervision should enforce the diversification of investment strategies and long-term-horizon strategies in order to reduce pro-cyclical tendencies and

to enhance macroeconomic stability. As argued above IORPs are due to their "safe" business model (retirement provisions, long-term nature of liabilities, no withdrawal on short notice) and the thereby enabled long-term investment strategies very suitable to carry macroeconomic risks and should therefore be allowed to play an important role as macroeconomic stabilizer. The supervisory bodies might play an important role in over viewing and coordinating the investment strategies not on a short-term basis but in the long run and at a structural level.

This perspective is absolutely in line with the OECD project on "Institutional investors and long-term investment" (http://www.oecd.org/dataoecd/0/27/48439143.pdf). The project is directed against the "increasingly short supply of long-term capital since the 2008 financial crisis" which "has profound implications for growth and financial stability". With this project the OECD tries to "promote policy options to encourage institutional investors to act in their long-term capacity" and "as shock absorbers at times of financial distress". This topic was also picked up and supported by Eurofi, the European think tank dedicated to financial services, chaired by Jacques de Larosière (see e.g. http://www.oecd.org/dataoecd/37/42/48281131.pdf).

AFPEN strongly agrees with this position and wants to point out that the long-term investment strategies of IORPs are able to fulfill exactly those important aspects mentioned by the OECD:

• Long-term IORP's investments are patient capital: it allows investors to access illiquidity premia and lowers turnover, it therefore encourages less pro-cyclical investment strategies and therefore greater financial stability.

• Long-term IORP's investments are engaged capital: it encourages active voting policies by the investors, leading to better corporate governance.

• Long-term IORP's investments are productive capital: it provides support for infrastructure

	development, green growth initiatives, etc., leading to sustainable growth. With respect to the stabilizing potential of long-term investment strategies and risk diversification by IORPs AFPEN wants to stress that especially the great quantity and variety of small IORPs all over Europe contributes to these financial and macroeconomic stability goals. A large amount of IORPs avoids the systemic problems of a failing "global player" and the great variety of IORPs amplifies the risk diversification potential due to different investment strategies. Forcing those small IORPs to accomplish all the legal and IT following the solvency II framework would lead to the disappearance of many institutions due to the lack of capacity and the rise of costs. With respect to the macro stability perspective variety and quantity of IORPs should definitely be appreciated and supported and decreased.	
13.	The principle of the „mark-to-market" valuation rests on the notion of efficient financial markets and the assumption that prices in financial markets reflect real economic fundamentals and therefore allow for an economically sound pricing of assets. In consequence this would imply that the volatility of financial markets is "justified" economically speaking. In the light of the recent financial fluctuations and market disruptions, the short-term volatility of stock prices, interest rates and credit spreads of the financial crisis since 2008 and the actual sovereign debt crisis in Europe it is necessary to doubt that these grave fluctuations and down-turns are justified in economic terms. The main problem hereby is that the "mark-to-market" valuation of assets directly maps these movements into the balance sheets and the calculation of the SCR although this short-term volatility is not of great importance especially for IORPs: IORPs typically have a long term investment horizon and follow a "buy-and-hold"-strategy with respect to several asset classes like equities, bonds, property, etc. For instance high-rated fixed-interest securities, which are one of the key asset classes for IORPs, are normally held to maturity. So IORPs can cope with fluctuations in value based on short-term interest rate changes or stock market fluctuations and could therefore act as a counter-cyclical stabilizer in financial markets if not forced to "marked-to-	

	market" valuation. In consequence for IORPs the "mark-to-market"-principle is not an appropriate and reasonable valuation criterion for assets and hence assets should not be subject to fair value accounting! For these reasons AFPEN strongly opposes to adopt the concept of "market-consistency" for the valuation of assets for the purpose of the regulation and governance of IORPs!	
14.	In AFPENs opinion EIOPA has correctly identified the strong drawbacks which are connected to the transfer principle for valuating liabilities (9.3.6.). Because of the involvement of the sponsoring undertaking (financial guarantee due to social and labor law) the concept of transfer has no conceptual meaning and is according to AFPENs consideration not the appropriate starting principle for valuing liabilities. In addition AFPEN does not see any reason to use the transfer principle as a theoretical or "intellectual concept" as stated by EIOPA (9.3.7.). If a concept is not appropriate, not related to real conditions and without practical relevance why then use it? But AFPEN also is critical to the concept of market-consistent valuation. As the occupational pen-sions organize intergenerational risk sharing and because of the long-run response possibility, there is no necessity to hold financial assets at all times measured at market value. The same holds for a theoretical liquidation of assets and liabilities: A disposal to another IORP or an insurance company is virtual inexistent and alien to the system of occupational pensions in the public sector and makes no conceptual sense because of the commitment of the sponsoring undertaking. Hence also the concept of market-consistent valuation of liabilities and technical provisions is irrelevant and useless. Furthermore the "risk free" interest rate term structure is highly problematic for practical reasons: The very concept of such risk free interest rates must be doubted with respect to the volatility of capital markets and the dethronement of virtual all the former top-rated government bonds. But anyhow technical provisions would be calculated with these synthetically constructed long-term interest rates and would in the case of IORPs expectedly lead to a sharp increase in technical provisions. Also the resulting volatility of long-term interest rates due to the construction process of	

	the interest rate term structure has disastrous effects for IORPs. Last but not least AFPEN wants to advise against that a regulatory framework for IORPs sticks to the principle of market-consistent valuation for the very reason of consistency in valuation criteria and the harmonization of regulation! If the transfer principle and the market-consistency principle for the valuation of liabilities of IORPs is not appropriate and reasonable they should simply not be used! AFPENs conclusion for the valuation of assets and liabilities: All this culminates in the conclusion that the valuation criteria must not be separated from the very purpose a balance sheet is dedicated to: For IORPs the purpose of the solvency balancing cannot be the evaluation of a market value in case of disposal or transfer because of the specific structure and relation between employee, employer and pension fund. Delivering this kind of information for capital markets is therefore not relevant and using these valuation criteria for the control and governance of IORPs has disastrous consequences.	
15.	AFPEN agrees that the own credit standing should not be taken into account when valuating liabili-ties. Additionally AFPEN wants to point out that the very consideration to take into account the own credit standing is implied by the market-consistent valuation principle: In case of a down-grading of the credit-standing of a pension fund the market-value of the assets, which another institution holds, decreases. Therefore, to be market-consistent, the IORP can decrease the value of liabilities in its own balance sheets and in the end the net equity of the IORPs increase even though its own credit standing has declined. This exemplifies the problematic aspects of market-consistent valua-tion if applied in a consistent manner and illustrates that there is no single valuation approach on “sound economic principles” for all purpose!	
16.	AFPEN appreciates that supervision valuation standards and accounting standards should in general be compatible. Therefore the standards for a solvency balance sheet must be in line with the existing	

	national accounting standards, as these standards are central for internal and external accounting of IORPs. The second reason for using national standards is the fundamental inadequateness of a market-consistent valuation in case of IORPs due to the specific business model, no disposal or transfer because of the specific structure and relation between employee, employer and pension fund, the nature of liabilities as well as the long-term investment strategy (see answers #13 and #14 above for an argumentation in length). In addition diverging solvency and national standards give contrary impulses to the controlling and governance of IORPs.	
17.	AFPEN wants to point out that the way to calculate technical provisions should not be harmonized. As argued above, market valuation and the transfer of liabilities is not appropriate for IORPs, therefore there is no need for 1. the distinction of hedgeable and non-hedgeable risks 2. and 2. a risk marge upon the best estimate component for the calculation of technical provisions as the risk marge reflects the external cost-of-capital fraction necessary only in case of the disposal and transfer of liabilities of a IORP to another financial institution. In the end the notion of non-hedgeable risks and therefore the calculation of the best estimate plus the risk marge as cost-of-capital component only reflects the notion of the approach of a market-valuation of liabilities (see 9.3.9.) which is obvious in the case of hedgeable risks (see Solvency II, Art. 77 (4) para. 2). For these reasons AFPEN objects to all the articles related to the best-estimate calculation of technical provisions (see Solvency II, Art. 76 (5) and Art. 77-82).	
18.	The risk marge upon the best estimate component for the calculation of technical provisions reflects the external cost-of-capital fraction necessary only in case of the disposal and transfer of liabilities of a IORP to another financial institution. This is not relevant for IORPs as liabilities are not sold and there is no market. Hence no external capital premium is needed. And a additional and explicit risk marge as additional security buffer against wrong assumptions in the calculation of technical provisions is not necessary if the best estimate concept is not implemented. Within the existing provisions of the IORP Directive (Art. 15 and 16) the prudent calculation principles are sufficient.	
19.	AFPEN suggest not including future accruals in the calculation of technical provisions because of the uncertainty of the concrete amounts of these payments and the fact that they are not guaranteed.	

|---|---|---|
	Only guaranteed benefits should be accounted for. These expected future payments can serve as management tool also to buffer adverse developments.	
20.	EIOPA agrees that technical provisions should be calculated gross without including amounts of recoverable or alike. However, these additional assets shall be considered somehow (i.e. as auxillary own funds) as well as risk-mitigating techniques for the calculation of technical provisions.	
21.	AFPEN strongly opposes to concept of one single risk free interest rate term structure set by EIOPA. The very concept of such risk free interest rates must be doubted and the low level of interest rates and the volatility especially of the synthetically constructed long-term interest rates would have disastrous effects on the amount and volatility of technical provisions. This problem is amplified by the conceptual uncertainty with respect of the construction of the term structure and the aribitrariness of the interest rates at the reference dates. Due to the long duration of technical provisions these fluctuations have extreme consequences and arbitrary consequences for the balance sheets of IORPs. The same holds for the weaker concept of the two-level interest rate scheme suggested by EIOPA. The arbitrariness problem of the risk free concept flushes over and therefore cannot hide the general problem of the strong dependence of technical provisions on interest rate assumptions. AFPEN therefore suggests sticking to existing provisions in Article 15 (4) b of the IORP Directive which allows to choose "prudent rates of interest" taking into account 1. the yield on the corresponding assets held by the institution and the future investment returns and/or 2. the market yields of high-quality or government bonds. These provisions also reflect the varying national pension schemes and the differences in Social and Labor law.	
22.	AFPEN agrees that the service costs due to accrued benefits should be included in the calculation of technical provisions.	
23.	First of all AFPEN suggests making a very clear distinction between unconditional and conditional benefits. Furthermore AFPEN suggests not including unconditional and discretionary benefits in the calculation of technical provisions because of the uncertainty of the concrete amounts of these payments and the fact that they are not guaranteed. AFPEN supports the idea of informing the	

	insurants about the general possibility of future benefit increases. But this should not be reflected in the calculation of technical provisions or in separate surplus fund for discretionary benefits. Only guaranteed benefits which are sufficiently expectable in height should be accounted for. The possibility to indirectly reduce discount rates by including uncertain future benefits and therefore delivering a security buffer is in contrast to the neutral information perspective of the best estimate. Uncertain expected future payments can better serve as management tool to buffer adverse developments.	
24.	AFPEN agrees to the including of contractual options in the calculation of technical provisions. With respect to long-term guarantees EASPSI in general sees huge difficulties for IORPs: The risk-based and mark-to-market valuation of assets and liabilities leads to a highly volatile and doubtable calculation of own funds, as was often argued before by AFPEN. This problem culminates in the question of long-term guarantees due to the non-hedgeable duration mismatch between assets and liabilities for IORPs. Given the very long-term guarantees of defined benefit (DB) pension schemes the resulting capital requirements are immense. Important to point out: The security for the guaranteed benefit in case of DB schemes is already captured in the calculation of technical provisions. Therefore no additional buffer for long-term guarantees as in case of guarantees in the sense of Solvency II Art. 79.	
25.	AFPEN does not see any advantages of a mandatory rule for risk segmentation into homogenous risk groups and wants to point to the additional cost for small IORPs. Furthermore the notion of collective risk sharing as a expression of solidarity is important for some public sector IORPs.	
26.	AFPEN in general agrees to option 1: not to include Article 81 in the IORP II but incorporate the general principle. This means that recoverables from reinsurance contracts and special purpose vehicles shall be calculated separable and adequately considering the effects of counterparty default or credit risk and account for time differences. The concrete values are subject to the individual estimation of the IORP based on experience and rating information. In AFPENs opinion it is to avoid a mechanical adjustment requirement of technical provisions due to adjustments of rating in order to beware of pro-cyclical effects.	

27.	AFPEN agrees that it is useful to have an Article regarding the availability of data and the use of approximations in the calculation of technical provisions. But AFPEN also wants to stress that the adequate use of data processing is well-established and already characterizes the reality of the calculation of technical provisions within IORPs. Such a procedure is not restricted to a Solvency-II-like regulation structure.	
28.	AFPEN agrees. But again, this is already well-established and not restricted to a Solvency-II-like regulation structure.	
29.	AFPEN agrees that the adequateness of the amount of technical provisions as well as the methods and assumptions for its calculations are disclosed on request from the supervisory. By means of the national supervisory review of amount and calculation of technical provisions a greater variety and diversification of methods and internal models can be enabled. Again, this is already well-established and not restricted to a Solvency-II-like regulation structure.	
30.	AFPEN agrees that in general the supervisor shall have the power to require IORPs to raise the amount of technical provisions if requirements are fulfilled. Important are sufficient reaction periods and if necessary a well-ordered inclusion of the sponsoring undertaking. Again, this is not restricted to a Solvency-II-like regulation structure.	
31.	AFPEN strongly suggests that the first steps to go in the review of the IORP Directive are Quantitative Impact Studies before any Level 1 decisions taken! With respect to the essential consequences on the individual IORPs as well as on the pension system of Member States it is absolutely necessary to get impression of these changes in advance due to the variety of pension scheme arrangements and differences in benefits. In addition the Level 2 implementing measures must respect national characteristics in form of security mechanisms and the relations of technical provisions regulations to Social and Labor Law. In addition has to be accounted for the possibility of benefit reductions and the level of security, which in case of public sector IORPs is the result of paritarian negotiations of representatives of employees and employers. In the end it must be respected that an increase of security comes at the expense of a decrease of benefits–and the level of benefits is a political decision at the national level of Member States and not a technical implementing measure.	
32.	AFPEN strongly disagrees. The main message of the answer to question #33 applies here as well:	

	Security and benefit aspects cannot be separated; therefore changing the former implies changing the latter. But this is a strictly political issue and must remain under Member State competence to assure the consideration of national characteristics.	
33.	EIOPA has introduced a possibility to integrate the sponsor support as additional asset in form of the Holistic Balance Sheet (HBS). A comprehensive argumentation why a valuation of sponsor support in form of the HBS does not change the situation for the better but makes it even worse is delivered in the answer to question #12. AFPEN wants to recall the main points with respect to the sponsor support: It is impossible to find serious quantitative values for the sponsor support due to the nature of this asset. If there exists a legal obligation to pay in cases of emergency in full this indeed would mean that a new liability up to the amount of which the IORP will need to close its market-value balance sheets appears in the balance sheets of the sponsor–the sponsor would be immediately financially over-indebted. The consequence would be the termination of occupational pension retirement provisions and the disappearance of many IORPs on a large scale. Left over is what could be named the “Holistic Balance Sheet Paradox”: The security level for the employees is exactly the same as before, economically speaking nothing changes, but with the HBS costs have increased dramatically. The existing security mechanisms today already safeguard with low cost exactly that level of security which shall be created with pretended quantitative precision in the new regulation regime for much higher cost (better case) if not for the price of termination of existing pension scheme arrangements (worst case)!	
34.		
35.		
36.		
37.		
38.		
39.		

40.		
41.		
42.		
43.		
44.		
45.		
46.		
47.	The goal of any investment rules for IORPs should be consistency with the retirement objective of IORPs. Therefore we accept the abandoning of rule-based regulation aspects with quantitative limits on several types of investments and the emphasis of the prudent person principle, as it offers in general the possibility for a reasonable and long-term oriented asset management in the specific asset-liability context of IORPs. No further provision on investment decisions is needed. In addition AFPEN wants to point out the difficulties of imposing quantitative provisions to different schemes from different Member States with varied and heterogeneous pension systems, with different pillar compositions and different retirement provision aims. However: Although there might be less limiting quantitative rules in place, under a principle-based supervision the disclosure requirements to the supervisor are likely to increase and it is left to the supervisor's discretion if the goal of a prudent and appropriate asset management is sufficiently adhered to. Therefore we want to accentuate that a general change-over to a principle-based supervisory system must not lead along the way to more interventions in investment decisions.	
48.	Although the qualitative criterion of the prudent person principle is a sufficient basis, we think the Member States should be given the possibility to offer to the IORP at least two options: 1. Prudent person principle without any further quantitative limitations on investments	

	2. Rule-based quantitative limitations similar to those in the existing IORPs Directive Additional quantitative limitations to the existing rules in the IORPs Directive are not necessary, neither on the national or the European level. It should be the intention of the investment supervision to allow for different investment policies across IORPs in Europe, which leads to a better diversification of risks.	
49.		
50.	The debate concerning investment rules, and that means, the answers to the CfA 7, must not be separated from the discussion of the adoption of the Solvency II structure in the planned IORP II Directive. This holds especially for the core elements of pillar 1 and the new Solvency Capital Requirement (SCR). This has direct implications for discussing the impact on investment decisions, both at the individual and the macroeconomic level: 1. Investment risk provision via SCR One of the basic ideas of pillar 1 of Solvency II is the determination of a firm specific risk pro-file, which directly leads to a risk sensitive calculation of the SCR. That means the SCR is calculated according to the specific liabilities and assets and the specific investment strategy of a firm: a more risky investment strategy leads to a higher SCR. Therefore in logic of the Solvency II structure there is no more necessity for quantitative investment limits, as investment risk provisioning is warranted by the specific amount of SCR (See Solvency II Directive, Recital 68). This means if IORP II is modified according to Solvency II quantitative investment limits in addition to the SCR would be twofold and redundant. 2. Implicit impact on investment decisions and regulatory arbitrage However, the pillar I of the Solvency II structure is not well suited to address the specific as-pects of IORP's investment behavior. If the design of the capital requirements to IORPs is similar to the	

current SCR-formula of Solvency II and the Technical Specifications of QIS 5, there definitely exist investment decision biases for several reasons.

For example:

• Investments in different asset classes leads to different solvency capital require-ments. For example real property, alternative investments and long-term invest-ments, which are especially important for IORPs because of their long term invest-ment horizon, are negatively affected.

• The same holds for the 1-year-horizon of the standard formula, which drastically limits the long-term risk diversification perspective of IORPs.

• The typical duration mismatch of assets and liabilities, which is common for IORPs due to the longer duration of liabilities compared to assets, also has a negative influence on investment decisions of IORPs.

These impacts on investment decisions on the individual level due to the structure of the pillar 1 regulatory framework with its implicit but essential biases of decisions has to be kept in mind when discussing the replacement of explicit restrictions.

3. Pro-cyclical incentives

In consequence this leads on the macroeconomic level to a reduction of the essential contribution which IORPs could provide with respect to stabilizing financial markets and the macroeconomic performance. Therefore AFPEN wants to additionally point out that the standard formula of the solvency II SCR is problematic with respect to pro-cyclical investment behavior:

1. The standard formula implements the same investment incentives for all IORPs, who are a

| --- | --- | --- |
	considerable group of institutional investors. This leads to a reduction in the diversity of investment strategies and leads to less diversification of market reactions. Especially in times of financial distress the SCR enforces pro-cyclical behavior of IORPs. 2. The one-year-horizon of the SCR also aggravates the pro-cyclical-tendencies, as IORPs might be forced to sell assets in order to meet the SCR because of the decrease in equity markets. This means that the "potential" loss (due i.e. to volatile or collapsing stock pric-es) turn into actual losses. Additionally the 1-year-horizon drastically limits the long-term risk diversification potential of IORPs. Both of these aspects of the SCR-standard formula are detrimental to the potential anti-cyclical role that IORPs could perform in financial markets because of their long-term hori-zon investment behavior. Therefore the construction of the Solvency II SCR standard formula has in principle a negative impact on the stabilizing function of IORPs for financial markets and is not in line with macro-prudential and financial stability objectives.	
51.	Borrowing in general should be allowed for if the objective of borrowing is due to risk management and the hedging of liabilities, similar to the provisions for the use of derivatives (see Art. 18, 1d of the current IORP Directive). To avoid excessive risk taking borrowing could be subject to the approval of the national supervisory authority. Moreover subordinated loans should be excluded from the prohibition of borrowing.	
52.	The objective of supervision and the standard formula of the SCR in Solvency II In general we support the notion that the supervisory structure should avoid pro-cyclical behavior. Hence we think that the standard formula of the Solvency Capital Requirement (SCR) as the core element of pillar 1 of the Solvency II structure is problematic with respect to in-vestment behavior for several reasons: 1. The standard formula implements the same investment incentives for all IORPs, who are a	

considerable group of institutional investors. This leads to a reduction in the diversity of investment strategies and leads to less diversification of market reactions. Especially in times of financial distress the SCR enforces pro-cyclical behavior of IORPs.

2. The one-year-horizon of the SCR also aggravates the pro-cyclical-tendencies, as IORPs might be forced to sell assets in order to meet the SCR because of the decrease in equity markets. This means that the "potential" loss (due i.e. to volatile or collapsing stock prices) turn into actual losses. Additionally the 1-year-horizon drastically limits the long-term risk diversification potential of IORPs.

Both of these aspects are detrimental to the potential anti-cyclical role that IORPs could perform in financial markets because of their long-term horizon investment behavior. Therefore the construction of the Solvency II SCR standard formula has in principle a negative impact on the stabilizing function of IORPs for financial markets and is not in line with macro-prudential and financial stability objectives.

The discussed tools to avoid pro-cyclical behavior

We agree with EIOPA that the main tool to handle financial distress is a longer recovery period so that the IORP concerned can reach the SCR. It is important to point out, that this so called pillar II dampener of art. 138 in the Solvency II Directive must be seen detached from the question how exactly the solvency capital requirement is determined and therefore not necessarily connected to the pillar I structure of solvency II. In case that the SCR standard formula of Solvency II is being adopted we strongly suggest applying at least the duration dampener (Art. 304 Solvency II) to account for the long term horizon of asset holding.

We do not fully agree with EIOPA with respect to the equity dampener (Art. 106 Solvency II). The equity dampener reduces the SCR in times of financial crisis, given that EIOPA defines something as "crisis", but, due to the symmetric nature of the dampener, the SCR rises even more in "good" times.

This means more volatility and insecurity of the SCR in general and leads to additional effort. This holds true even more for the actual discussion of a counter cyclical premium in form of an interest rate add-on to the risk-free interest rate with respect to Solvency II in order to decrease technical provisions in times of crisis (see Gabriel Bernardino, Opening Speech, EIOPA 1st Annual Conference, Frankfurt a. M., 16.11.2011). We do not support this tool.

Alternative perspectives on the supervision of IORPs: “individual security and macro stability”

AFPEN suggests changing the perspectives when thinking of a starting point for the regulation of IORPs: From the Solvency II “insurance”-perspective to a perspective that is more appropriate for IORPs. This also reflects the Commissions Call for Advice directed to EIOPA in March 2011 and the idea of developing a supervisory regime sui generis for IORPs. One of the notions, that should be central to the regulation of IORPs, could be named the “macro-stability”-perspective that enforces the diversification of investment strategies and the long-term-horizon strategies in order to reduce pro-cyclical tendencies and to enhance macroeconomic stability.

This is absolutely in line with the OECD project on “Institutional investors and long-term invest-ment” (http://www.oecd.org/dataoecd/0/27/48439143.pdf). The project is directed against the “increasingly short supply of long-term capital since the 2008 financial crisis” which “has profound implications for growth and financial stability”. With this project the OECD tries to “promote policy options to encourage institutional investors to act in their long-term capacity”.

AFPEN strongly agrees with this position and wants to point out that the long-term investment strategies of IORPs are able to fulfill exactly the important aspects mentioned by the OECD:

• Long-term IORP’s investments are patient capital: it allows investors to access illiquidity premia and lowers turnover, it therefore encourages less pro-cyclical investment strategies and therefore

greater financial stability.

• Long-term IORP's investments are engaged capital: it encourages active voting policies by the investors, leading to better corporate governance.

• Long-term IORP's investments are productive capital: it provides support for infrastructure development, green growth initiatives, etc., leading to sustainable growth.

At this point the supervisory bodies might play an important role in over viewing and coordinating the investment strategies not on a short-term basis but in the long run and at a structural level. This would imply a "micro-security and macro-stability"-perspective on supervising for IORPs.

With respect to the stabilizing potential of long-term investment strategies and risk diversification by IORPs AFPEN wants to underline the fact that especially the great amount and variety of small IORPs all over Europe contributes to these financial and macroeconomic stability goals. Forcing them to accomplish all the legal and IT following the solvency II framework would lead to the disappearance of many institutions due to the lack of capacity and the rise of costs.

Remark:

The general notion of the counter-cyclical premium is an essential contradiction to the mark-to-market-principle, which is the basic valuation principle of solvency II. The reason is that the counter-cyclical-premium calls into doubt the assumption that prices in financial markets reflect real economic fundamentals and that in consequence the volatility of financial markets is "justified" economically speaking. Consequently this means that the valuation criterion "market-consistency" is only valid until the involved volatility of stock prices, market disruptions and credit spreads is limited. And not only in the light of the financial fluctuations of the financial crisis since 2008 and the actual sovereign debt crisis in Europe it is necessary to ask again if these grave fluctuations and down-turns are justified in economic terms and if we should really map these movements to the balance sheets and

	the calculation of the SCR? We therefore strongly suggest rethinking the adequacy of the concept of “market-consistency” as the only criterion for the valuation of assets and liabilities, especially in the context of IORPs, as it directly carries the problem of volatility into the solvency balance sheets of the IORPs.	
53.	AFPEN principally endorses the general principles laid down in Art. 29 and 31 of the Directive 2009/138/EC. However, AFPEN would like to remember that the Solvency II Directive should not be the basis of any modification of the IORP-Directive. Instead of that and in line with EIOPA’s Call for Advice of April 2011, AFPEN would like to advocate for developing a supervisory regime sui generis, taking the IORP Directive as the starting point. Further elements to be taken into consideration in developing general principles of supervision are international standards developed by the OECD, IOPS and other entities, which are described in this chapter (e.g. the long-term nature of pension funds and the avoidance of pro-cyclical behavior in Principle 6 of IOPS) This approach is justified by the main differences between IORPs and insurance institutions as also identified in this chapter (e.g. 14.3.13 – 14.3.16). Furthermore this opinion is endorsed by the findings of the OPC reports that showed a large variety of supervisory practice without unveiling any evident lack in security for beneficiaries. The respective pension scheme and business objectives have to go along with suitable supervisory approaches. On the one hand, IORPs have limited business spectrum, particularly they have no diversified non-life business. But diversity is requited by the Solvency II regime. On the other hand, IORPs have additional security mechanisms compared to insurance companies. Against this background, AFPEN would therefore support option 1 of this section if a decision had to be taken. This point of view is additionally in line with EIOPA’s statement in 14.3.8 (“In the context of the supervision of IORPs, it is possible that the goals of Articles 29 and 31 of the Solvency II Directive may be best achieved by means other than revisions to the IORP Directive.”).	
54.	To AFPEN’s opinion, EIOPA has correctly identified those issues and in particular the differences between IORPs and insurance undertakings. Additionally, AFPEN would like to mention further distinctive features that differentiate institutions of the so-called “second” and “third” pillar as far as benefit security is concerned.	

	IORPs have got specific inbuilt security mechanisms that ensure the solvency position of pension schemes. In some pension schemes, contributions and the main benefit parameters can be modified by the employers and the employees' representatives. Many pension schemes, especially of the public sector in the Netherlands, the Scandinavian countries or in Germany, foresee paritarian management. Paritarian management involves social partners in the Board of Directors of the IORP or in similar internal supervisory bodies. Due to paritarian representation, the interests both of the employers and of the employees and beneficiaries are well-balanced and the benefit security can therefore be ensured. Another element, which certifies benefit security, is the long term investment horizon of IORPs since they uniquely administrate pensions. Therefore, long-term developments are more important than short term evolutions that have to be considered by other companies submitted under the Solvency II regime. And for DB- and hybrid DB-/DC-schemes, in at least some Member States, employers have the ultimate responsibility for the fulfilment of the pension promise as additional benefit security mechanism. Additionally to this responsibility for the fulfilment, many IORPs have the possibility to adjust the premium or benefit by threat to solvency. Hence, IORPs require less capital resources than life insurers with a bounded relation between premium and benefit. Particularly with regard to an interest rate scenario reduction, this adjustment mechanism institutes an adequate approach to "close" a potential duration gap.In contrast to insurance tariffs, business lines of IORPs have almost no embedded policy holder options. Consequently, speculation against the community of policyholders just as much the antiselection risk are negligible.	
55.	AFPEN is of the opinion that supervisory authorities should also have powers to require IORPs to conduct stress tests. However, any EU rules in this field should only contain basic principles because of the uncontested divergences in the calculation of liabilities and others, which are typical for the European occupational pension landscape and which have prevented EIOPA to conduct an EU-wide stress-test on all IOPRs.	

	Before discussing the introduction of any EU wide regulation in this field, AFPEN suggests that EIOPA analyses thoroughly the different national supervisory approaches to stress testing as mentioned in 15.2.6 and 15.2.7. Even though half of the participating countries have apparently not introduced such a procedure, AFPEN proposes that EIOPA considers whether the reasons for a lack of national regulation in this field might also apply for any EU-wide rules. Especially because of the diversity of the pension funds in the EU Member States, AFPEN is also in line with EIOPA's findings in 15.3.5 according to which the principle of proportionality has definitely to be taken into consideration because of the wide diversity of pension funds in size, type of pension benefits, level of capital cover, restructuring options and the level of risk-taking. Hence, AFPEN endorses EIOPA's suggestion to integrate explicitly the principle of proportionality and diversity of business lines in any future regulation for stress tests for clarification purpose.	
56.	AFPEN is not of the opinion that the sanction regime should be enforced. AFPEN has not seen any evidence of severe irregularities of pension institution in the recent past that would require enhanced sanctions beyond the current rules in the IORP Directive. AFPEN furthermore believes that the sanctions in Art. 36 of the Regulation 1060/2009 are not appropriate for pension institutions since that Regulation applies to rating agencies whose activities are not comparable with those of IORPs.	
57.	Due to the fact that AFPEN does not endorse any modification of the existing penalty system of the IORP Directive, AFPEN advocates that the knowledge of any imposition of penalties should remain restricted.	
58.	Since the main business of AFPEN's members, the public sector pension institutions, is regularly restricted to the domestic level, AFPEN does not have any experience in cross border activities to answer to this question.	
59.	AFPEN is of the opinion that the current powers of intervention of the IORP Directive are adequate and should therefore be retained. (option 3). This solution has, above all, the advantage that Member States are able to determine the suitable supervisory powers for their population (see 16.3.5). Such a flexible approach is necessary to cope with the divergences of occupational pension schemes within	

	the European Union and to optimize beneficiaries' protection. To EAPSP's point of view, EIOPA has correctly analysed the negative impacts of an introduction both of the supervisory review process and the imposition of capital add-ons. AFPEN is in line with EIOPA's findings that there are different ways in which pensions are successfully delivered and that any changes will have cost impacts. Consequently, it is questionable to change regulations that have revealed to be successful in practice. With respect to EIOPA's conclusion that option 1 would ensure cross-sectoral consistency, AFPEN is of the opinion that IORPs and insurance undertakings are operating on different sectors. Whereas IORPs traditionally deliver supplementary pensions only for employees of a certain (group of) employer(s), insurance undertakings are operating on the free market. Hence any consistency cannot be achieved since both are basically active on different sections. If ever EIOPA does not follow AFPEN's opinion and recommends a supervisory process along the lines of Art. 36 of the Solvency II Directive (option 2), AFPEN strongly recommends considering the uncontested particularities of IORPs in relationship to insurance undertakings as EIOPA has identified under 16.3.4.	
60.	Due to the reasons explained in answering to question 59, AFPEN is against any capital add-ons and therefore rejects option 1. Furthermore, the prerequisite of capital add-ons is that the Solvency II structure also applies to IORPs about which AFPEN has serious concerns (see above answer to question x).	
61.		
62.		
63.		
64.		
65.		
66.		
67.		

	Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation	Deadline 02.01.2012 18:00 CET
68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		
83.		
84.		
85.		
86.		
87.		
88.		
89.		
90.		
91.		
92.		

93.		
94.		
95.		
96.		