

<b>Comments Template on EIOPA-CP-11/006</b> <b>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline</b> <b>02.01.2012</b> <b>18:00 CET</b>
Company name:	TCO	
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<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>.</li> <li>⇒ 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.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.               <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p>		
<b>Question</b>	<b>Comment</b>	
General comment	General Comment 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	

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total of 1,2 million members.

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.

TCO welcomes the opportunity to respond to the Call for Advice on the review of Directive 2003/41/EC: second consultation.

TCO fully supports the EU objective to achieve sustainable, safe and adequate 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.

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.

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

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	<p>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"> <li>- A thorough impact assessment should be carried out before any legislative proposals related to the IORP-directive are made</li> <li>- 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.</li> </ul>	
1.	<p>TCO agrees with EIOPA that the question of scope is deeply political.</p> <p>It should however be noted, that one of the main drivers for the review of the IORP was the desire to widen its scope. Now that EIOPA and the Commission have signalled that there is a more limited approach to the "level playing field", one of the main justifications given for the review by the EC disappears. The case for review must therefore be considered to be diluted.</p> <p>TCO is in favour of a new analysis of Regulation 883/2004, of which schemes could be considered social security, before determining the scope of the internal pensions market which complements social security pensions. That will facilitate agreements on what are truly "occupational pensions" and what are "1<sup>st</sup> pillar pensions" before revising the occupational pension framework.</p> <p>TCO is also in favour of and would support EIOPA and the Commission to adopt a typology of European pensions before further regulating this area.</p>	
2.	<p>TCO is in favour of including all occupational pension funds from all Member States in the scope of the Directive, and excluding all those that are not occupational.</p>	

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<p>3.</p>	<p>TCO prefers option 1: do not change the current IORP Directive.</p> <p>Option 2 should be rejected as the uneven application of the same rules across Member States would lead to an even more complex set of rules for IORPs and would present yet another obstacle to the further development of an internal market for occupational pensions. On a more fundamental level, this option would defeat the purpose of the scope debate, as it would create a more differentiated set of rules across Member States, thus creating more obstacles to cross-border pension provision.</p> <p>Option 3 should be rejected since it would blur the distinction between occupational and non-occupational pensions, or do away with the concept of “occupational”. Since the current IORP Directive was adopted to reflect the specificity of occupational pensions, this option would take away the rationale for the IORP Directive itself.</p>	
<p>4.</p>	<p>TCO does not identify any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.</p>	
<p>5.</p>	<p>TCO agrees that the current definitions are insufficiently precise. TCO also notes with satisfaction point 5.3.20., which states that “it is possible that the lack of take-up is not due to failing of the Directive or Member States interpretations, but to other reasons such as a basic lack of demand”. The complexities of national SLL and tax laws are among these reasons.</p> <p>TCO agrees with the new proposed definitions of “host member state” and “sponsoring undertaking” and would like to underline that, as also mentioned by EIOPA (5.5 EIOPA’s advice), that IORPs, should respect the applicable social and labour law, irrespective of whether that tis the law of the host Member State.</p>	

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	<p>In situations where the present definitions may lead to different interpretations, TCO would call for a flexible application of the rules and to keep in mind the purpose of stimulating mobility of workers and of facilitating cross-border IORP activity.</p> <p>TCO would warn against including the power for host state supervisors (or authorities of the Member State of the SLL) "to take measures against the IORP", as proposed by EIOPA in its final paragraph of chapter 5.5. (p.35). One of the prerequisites for a bigger internal market for occupational pensions is to have one supervisor for cross-border IORPs, which in our view should be the home state supervisor (except where SLL is concerned).</p>	
6.	<p>TCO prefers option 1, leaving it to Member states to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ringfencing is a "subjective area" in its 2010 report. In our opinion studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted.</p> <p>TCO believes that the Commission should not, at this moment, harmonise ring-fencing rules, and let Member States keep the power to prohibit ring-fencing where national rules already do so.</p> <p>TCO also considers ring-fencing rules more important in mandatory systems than in voluntary systems.</p>	
7.	<p>.An excessive use of ring-fencing would lead to a loss in achievement of economies of scale and to increased administrative costs for IORPs. TCO would therefore call on EIOPA to respect Member State regulations in this area. There has to be a fair balance between protecting benefits and the need for IORPs to function effectively also in stress situations.</p>	

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8.	TCO is not in favour of making ring-fencing obligatory in case of cross-border activity. One reason for IORPs to go cross-border is to achieve economies of scale, but this advantage will be removed if the actual IORP is forced to set up separate legal persons or keep separate assets in the host country.	
9.	Given the differences in approaches between the Member States, more analysis is needed before any rules are adopted. Privilege rules are part of national contract, commercial and insolvency law. Since Member States to a great extent enjoy sovereignty in these legal fields, Member States should not be asked to introduce privilege rules at national level.	
10.	TCO is in favour of option 2. There should not be a “fit-for al” definition of prudential law. SLL varies across Member States. In our opinion the full funding requirement in case of cross-border activity is contrary to the principles of the European single market and presents an obstacle to cross-border activities.	
11.	TCO largely agrees with EIOPA concerning the impact of option 2. <i>Prudential regulation and SLL should mutually exclude each other.</i> Although option 2 would reduce the number of possible conflicts between supervisors, there will always be a risk for conflict situations in the future.	
12.	<p>TCO rejects the proposal of a holistic balance sheet when it is used for supervision. The complexities of a Holistic Balance Sheet make this an unsuitable as a primary tool of supervision. Workplace pensions are based on social and cultural traditions and strongly linked to first pillar pension provision in the different Member States. A single approach to pension security, which only focuses on short term solvency will jeopardize many existing European pension systems.</p> <p>The main assumptions underlying the holistic balance sheet approach are taken from the Solvency II model i.e. market consistent valuation of assets and liabilities, one year time horizon, 99.5% confidence level etc. Applying Solvency II rules to pension funds would mean a drastic increase in required assets. This is due to the use of different (lower) rates of discounting the liabilities and the implementation of (higher) capital requirements. The capital requirements aim to provide a high level of pension security in the short term, which would come at a very high price. TCO is also concerned that Solvency II capital requirements could lead to a de-risking of investment portfolios, threatening</p>	

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	<p>future returns and thus, benefit levels.</p> <p>Solvency II regime for IORP would mean negative effects on the total European economy. Higher pension contributions and sponsor support automatically lead to higher labor 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 the consumption in Europe.</p> <p>This outcome would have a negative impact on employment in the European Union. The proposed revision is not in line with Europe 2020 Strategy. In addition, TCO is concerned that the EU debt crisis has already reduced FDI in European companies</p>	
13.	<p>Assets should be valued on a market consistent basis. However, market consistency doesn't imply that it has to be valued Marked-to-Market (MtM). In appropriate circumstances, rules may permit methods that reduce short-term volatility of values over time for actuarial and funding purposes. For a long term investor like an IORP such an addition is not only reasonable but required, also with respect to the desired countercyclical policy of IORPs (<i>Call for Advice Question 8</i>). Therefore, the valuation of assets should not always be valued marked-to-market: exemptions should be possible. It should be allowed to value long term bonds which are bought to hold and to value these hold to maturity. Due to the long term horizon, IORPs are able to invest in more illiquid and return-seeking assets. For such kind of investments marked-to-market valuations are not always possible. It should also be possible to deviate from the MtM in cases of severe market disturbances.</p>	
14.	<p>No reference should be made to the transfer value, since the concept of transfer is not fully applicable to IORPs in the same way as this is used for insurance companies. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, IORPs do not have this forced threat. TCO also agrees with the point made that the transfer value for a pension contract would differ in case the liabilities would be transferred to an insurer or to another IORP. This makes the concept of transfer value unclear and therefore ineffective.</p>	

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15.	The own credit standing should never be taken into account in valuing the liabilities. Taking the credit standing of the fund into account, is denying the going concern principle.	
16.	TCO is in favour of option 1 not to change the current IORP Directive on this point. There is no need to make sure that supervisory standards are compatible with accounting standards. The objective of the 2 bases is too different to achieve convergence.	
17.		
18.	<p>There should not be a risk margin in the technical provisions, as option 3 proposes. TCO rejects option 3 because it advises a best estimate calculated according to Solvency II. TCO opposes the use of a uniform discount rate in order to calculate the best estimate of liabilities</p> <p>TCO rejects the proposal to include a risk margin into the technical provisions as stipulated in Solvency II (option 1). When IORPs are closed down, they do not have to go to another institution, which is the underlying reasoning of implementing a risk margin. Besides that, the Risk Margin in Solvency II is based on Cost of Capital. IORPs do not have Capital.</p> <p>TCO also rejects the proposal of including a risk margin into the technical provisions in order to create a safety net for wrong assumptions (option 2). Including uncertainty into the technical provisions themselves leads to the risk of piling up prudence on prudence.</p>	
19.		
20.	Yes, TCO agrees, the best estimate of the liabilities should be calculated without any amounts recoverable from insurance contracts.	
21.		
22.	Yes, service costs to accrued benefits should be taken into account in the value of the liabilities.	



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23.	TCO believes that only unconditional benefits should be included in the technical provisions. Conditional and discretionary benefits should not be taken into account in the value of the liabilities, given the nature and uncertainty of these benefits. TCO is also in favour of surplus funds e.g. in accordance with article 91.2 of Solvency II.	
24.	Yes, TCO agrees that contractual options should be disclosed in the value of the technical provisions.	
25.	TCO does not see any significant benefit of this proposal of splitting the technical provisions into homogeneous risk groups. It would be best not to make this mandatory. For small pension funds, such a split up would be overly burdensome.	
26.	TCO is in favour of option 1: article 81 should not be included in the revised IORP directive, but its principles could be beneficial. However, the allowance for credit risk should not be interpreted as imposing option elements within the value of the reinsurance contract, but rather as a (periodic) assessment regarding the likelihood of receiving the insurance.	
27.	TCO agrees it would be useful to introduce an Article regarding the availability of data and the use of approximations in the calculation of technical provisions. Since this is already covered by the current IORP Directive, TCO believes that it is not necessary to revise this article.	
28.	TCO agrees that an Article is useful regarding the comparison of technical provisions against experience, with appropriate adjustments. This is already covered by the current IORP Directive and it is therefore not necessary to revise this article.	
29.	TCO agrees it is useful to add an Article regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions.	

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	Since this is already covered by the current IORP Directive TCO believes that it is not necessary to revise this article.	
30.	TCO agrees that an Article can be added regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law. Since this is already covered by the current IORP Directive, TCO believes that it is not necessary to revise this article.	
31.	<p>TCO strongly disagrees with the proposal that a new IORP directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II.</p> <p>TCO advises EIOPA to answer to the Commission that Quantitative Impact Studies – on the level of the effect for an individual IORP and on the level of the effects of total pension provision in Member States - regarding the revision of the IORP directive before Level 1 measures are decided upon. The character of the pension benefit differs from Member State to Member State. As a result of the different characteristics of pension benefits, also the way how technical provisions are calculated is different. A relative small change of the way technical provisions have to be calculated could have major consequences.</p>	
32.	No, TCO disagrees. This would be a direct contravention of the principle of subsidiary. Pensions remain a Member State competence.	
33.	One of the great advantages of an IORP is that it has the ability of risk mitigating mechanisms, just like sponsor support. Sponsor support is an instrument to provide pension security and therefore has to be taking into account. When an IORP can call on sponsor support, it is not necessary for an IORP to have the same kind of capital requirements than an IORP without sponsor support. The same	

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	<p>holds for other kind of risk mitigating mechanisms, just like for example a pension protection scheme, intergenerational risk sharing and conditionality of pension benefits.</p> <p>TCO is concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. There should be simpler methods to allow for capital relief in case of sponsor support.</p>	
34.		
35.	<p>Yes, TCO agrees that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive. Subordinated loans can serve as a security mechanism for all types of IORPs. The subordination feature can offer loss absorption in problematic, but going concern situations.</p>	
36.	<p>TCO strongly opposes the idea of a uniformed level of security for IORPs across Europe.</p> <p>In most Member States the level of risk of a pension promise is currently part of the pension agreement itself, and is just one of several elements. Other elements are, for example, the accumulation of pension rights, the contribution 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. Just like the fact that it is not desirable that the IORP directive prescribes a uniform level of contribution rates, accrual rates or indexation policy, also levels of security of pension income should not be prescribed by European legislation. Also EIOPA underwrites this in their view: <i>"Some Member States provide relatively low benefits with high funding/security requirements while others provide higher promised benefits but with a lower level of funding"</i>. The implication of this is that EU solvency regulation should recognize the</p>	

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	<p>different levels of security accepted by national Social and Labour Law. Due to these differences and the opportunity of cutting pension rights in different Member States, setting the level of security across the EU, regardless of the presence of (ex-post) adjustment mechanisms of pension benefits, would risk communicating to members a false sense of “uniform” security.</p> <p>EIOPA states not to advise on a specific probability level. TCO agrees on this, but would like to add the suggestion that EIOPA, considering the arguments mentioned, advise the EC not to pursue a uniformed security level.</p>	
37.	<p>As discussed earlier, a harmonized confidence level is not appropriate for IORPs. If any confidence level is agreed upon within a pension scheme, TCO agrees that this confidence level should apply to a one-year time horizon.</p>	
38.	<p>TCO firmly rejects the proposal of applying the Solvency II-rules for calculating the SCR to IORPs.</p> <p>Pension security is about much more than scheme funding levels alone. A broader approach is required, taking into account the full range of mechanisms that pension institutions across different member states now use to ensure that pension incomes are safe and secure. IORP can for example call on other kinds of risk-mitigating elements, such as a protection fund and a sponsor guarantee. Additionally, solvency capital requirements in this context are superfluous, costly and will likely lead to a further decline of employers’ willingness to offer supplementary pensions. TCO considers this to be an inefficient use of capital. Extending the Solvency II framework to IORPs would increase the systemic risks in European financial markets.</p>	
39.	<p>Our strong preference is <i>not</i> to impose the SCR.</p>	

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40.	<p>Our strong preference is <i>not</i> to impose a uniformed MCR. This is because of the kind of pension contract differs from Member State to Member State. This implies that it differs if IORPs can have a funding deficit or not. In some Member States this is not possible because IORPs cannot call on risk mitigating instruments. In some Member States, the pension deal is based on intergenerational risk sharing. In such kind of a pension deal, it is possible to have a funding deficit. Also when an IORP can call for sponsor support, it should be possible for an IORP to have a deficit and therefore a negative MCR.</p>	
41.	<p>One of the great advantages of an IORP is that it has risk mitigating mechanisms, like a pension protection scheme. A pension protection scheme is an instrument to provide pension security and therefore has to be taking into account. When an IORP is covered by a pension protection scheme, it is not necessary for an IORP to have the same kind of capital requirements as an IORP without. The same holds for other kind of risk mitigating mechanisms, just like for example sponsor support, intergenerational risk sharing and conditionality of pension benefits.</p>	
42.	<p>TCO does not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level.</p> <p>Should the Commission, however, pursue the matter, it would be advisable to look carefully to the elements of operational risks already covered by the UCITS, AIFM and MIFID Directive.</p>	
43.	<p>In our opinion, Article 136 of the Solvency II Directive could be valuable for IORPs. When IORPs have procedures in place to identify deteriorating financial conditions, they are well prepared how to handle in a situation of stress.</p>	

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The inclusion of Article 141 in a revised IORP Directive is appropriate only with some amendments to reflect specific IORP situations. An insurance company has shareholders, which implies that the interests of the shareholders could be opposed to the interests of policy holders. However, IORPs do not have shareholders and have only stakeholders, which are all negatively hurt by a financial shock. Any additional supervisory action in case of deteriorating financial conditions should therefore not focus purely on restoring a solvent position, but on a fair distribution of any necessary measures. This is in relation with Social Labour Law. TCO wants to stress however that such a decision is primarily the task of the board of trustees and not of the supervisor. Any overruling power should therefore only be allowed in case the board is no longer in control of the situation.

44.

TCO is very much in favour of option 1. This option retains the current flexible position on recovery periods. The recovery periods out of Solvency II are not appropriate for IORPs. The OECD paper "*The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-Cyclical Funding Regulations*" (2010) shows that the current recovery periods in the different Member States are much longer than prescribed in Solvency II. Shorter recovery periods will stimulate IORPs to a procyclical investment policy, which does not only harm the pension incomes, but also the European Economy as a whole. After the crisis in 2008, many national regulators decided to lengthen the recovery period due to the character of the crisis. Such kind of flexibility should also be possible in the revised IORP Directive.

IORPs should have longer recovery periods than insurance companies or banks, because of the long-term character of the liabilities of an IORP and the fact that pension funds cannot be subject to 'bank-runs'. This is – economically – an advantage of IORPs. The revised IORP should take this into account.

It is our opinion, that when IORPs will be confronted with the shorter recovery

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	<p>periods from Solvency II, this would not only seriously harm the pension provision for participants, but it will also harm the total economy: short recovery periods forces IORPs to a procyclical investment; contribution and benefit policy. Therefore TCO advises EIOPA to plead for a quantitative impact assessment, before a decision is taken about recovery periods.</p>	
45.	<p>Yes, TCO agrees that in extreme cases, the supervisor should be allowed to impose the prohibition to dispose of the assets of the IORP.</p>	
46.		
47.	<p>In our opinion, the prudent person principle should remain the basic principle in a revised IORP Directive. The prudent person principle forces IORPs to make only investments which serve the interest of participants and pensioners. Investment rules should be consistent with the retirement objective of an IORP, based on the nature and duration of future liabilities, and be based on appropriate risk management.</p>	
48.	<p>The prudent person principle has a qualitative investment basis. In our opinion, the prudent person principle will achieve optimal investment results. The quantitative restrictions with respect to investing in the sponsor undertaking should remain. Other restrictions, however, would have a negative impact on investment performance. Principle-based supervision (prudent person) is therefore preferable instead of quantitative requirements. The review of the IORP Directive is an ample opportunity to abolish the current restrictions in the existing IORP Directive which gives Member States the option to implement quantitative investment restrictions.</p>	
49.	<p>There should be no differentiation in investment provisions between defined benefit and defined contribution pensions. In both cases the prudent person principle should be the basic principle. Any deviation from that principle will result in suboptimal investment outcome.</p>	
50.	<p>TCO is of the opinion that the prudent person principle will get an optimal investment result. Other</p>	

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	restrictions to the investment policy of an IORP will give a suboptimal result.	
51.	Subordinated loans should be exempted from the prohibition of borrowing. TCO advises to make clear that borrowing should be possible, only for effecting investment management (efficient management) or for risk reduction. Thus, for example swaps used for risk management purposes should not be considered as borrowing in this sense, and should therefore also be allowed.	
52.	<p>IORPs could contribute to the global financial stability and European economy with having a countercyclical policy. A lot of IORPs have the ability of having a funding deficit. Due to this ability, IORPs do not have to force their sponsor and participants to a huge increase of contributions and that is beneficial for the economy. There is a strong correlation between the probability of a funding deficit and an economic downturn. An increase of pension contributions during an economic downturn will have a negative impact on the recovery due to higher labour costs and lower consumption of participants. Besides that, a lot of IORPs have a countercyclical investment policy. This contributes to stability on global financial markets. The ability of having a countercyclical policy is something to be careful on. Therefore, TCO advises EIOPA to plead for an IORP Directive which stimulates a countercyclical policy and an impact assessment in order to see the macro-economic effects of a revision of the IORP Directive.</p> <p>TCO agrees in principle with EIOPA advice on article 136 and 141. However, the current method to calculate the equity dampener is not appropriate for IORPs. The average return period should at least be increased from three till six years. If this is not retained, TCO favours leaving out the equity dampener (option 1).</p> <p>Besides that, TCO asks EIOPA also to pay attention to the relation between counter cyclicity and recovery periods, capital requirements and the discount rate for the valuation of assets and liabilities which were addressed in the previous questions. For example, if a discount rate is stipulated that in economically bad times is low and high in economically good times, that means that in bad times IORPs will be poor and rich in good times. This provokes pro-cyclical behaviour. The same holds for an obliged derisking of the investment mix during an economic downturn.</p>	



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<p>53.</p>	<p>Yes, TCO agrees that the content of articles 29 and 31 of Solvency II could be introduced. However, it urges EIOPA and the Commission to respect the diversity of national occupational pension systems and the degrees of regulation and supervision to which IORPs are subject.</p> <p>Any rules in this area should therefore respect the principle of proportionality.</p> <p>TCO agrees that these rules would make explicit the elements that are already implicitly included in the IORP Directive.</p> <p>Importantly, TCO sees the risk of a steep increase in supervisory costs for IORPs. This should be avoided, since higher supervisory costs will be to the detriment of members' benefits.</p>	
<p>54.</p>	<p>The need to enhance benefit security, differences between IORP and insurance supervision and diversity of IORP are indeed issues that justify a difference in treatment between insurers and IORPs.</p> <p>TCO would also point to other differences between IORPs and insurers:</p> <p>The governance structure justifies different treatment: the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer where IORPs are concerned justifies a difference in treatment.</p> <p>IORPs are not-for-profit and often have no or very few members of staff, and no shareholders. There is therefore no incentive to increase "business" or "profits", or</p>	

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	<p>to “diversify” activities, which is different from many (though not all) insurance companies.</p> <p>The different roles and functions of IORPs and insurers should be reflected in regulation.</p>	
55.	<p>TCO agrees that stress testing could be introduced for IORPs through inclusion into the IORP Directive of the material elements from article 34(4) of Solvency II. This should however be subject to proportionality. The proportionality principles should be laid out in level 1 regulation.</p> <p>TCO supports tailor-made stress tests for IORPs, which take into account their specificities.</p> <p>TCO is not convinced that Article 36 of Regulation 1060/2009 (Credit rating agencies) is an appropriate basis for reinforcing the sanctioning regimes in Member States.</p> <p>Beneficiaries run the risk of having to pay the price, whereas they are the ones who deserve protection.</p> <p>Further analysis is therefore needed.</p>	
56.	<p>TCO is opposed to reinforcing the sanctions regime for IORPs. TCO would therefore agree to stress testing of IORPs, but would oppose administrative penalties.</p>	
57.	<p>TCO would agree with paragraph 15.4.3., that an overall obligation to make</p>	

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	penalties public would not be suitable. TCO also agrees with EIOPA that further analysis is needed here.	
58.	<p>TCO believes that IORPs should continue to have one main supervisor, namely in the home state, with Host competent authority supervising the IORP via cooperation with the Home supervisor.</p> <p>TCO advises against granting all powers to the Host supervisor, thus giving them the ability to intervene directly without a priori advising the Home supervisor.</p>	
59.	<p>TCO prefers option 3: Member States should be free to determine the most suitable ways of supervision for their IORPs.</p> <p>TCO notes that in many Member States, solid supervisory review processes are in place for IORPs and EIOPA correctly says that articles 13 and 14 of the IORP Directive already contain provisions relating to supervisory powers and information to supervisors.</p> <p>Should supervisory review powers be introduced however, they should be subject to the proportionality principle and should not lead to unreasonable additional costs or burdens for the IORPs. This principle already applies to insurers by virtue of article 36(7) Solvency II.</p>	
60.	TCO believes that it would be inappropriate to impose capital add-on requirements on IORPs similar to those applicable to insurers.	
61.	TCO agrees with EIOPA that material elements of article 38(1) of the Solvency II	

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	Directive could usefully be introduced in IORP Directive.	
62.		
63.	<p>Yes TCO agrees. The material elements of solvency II requirements for governance could apply to IORPs, subject to a respecting the proportionality principle and to a proper impact assessment of how these requirements can be applied efficiently and effectively to (small) IORPs.</p> <p>A proportionality check should be made at level 1. Further detailing of the rules can then be done at level 2. TCO believes that "proportionality" should reflect the nature and the scale of IORPs.</p> <p>Proportionality should be applied through rules equally applicable to all IORPs and not be applied on a case-by-case basis.</p> <p>In this discussion, it should be recalled that the Call for Advice explicitly states that a new supervisory system for IORPs should not undermine the supply or the cost efficiency of occupational retirement provision in the EU.</p>	
64.	Yes, TCO agrees that remuneration policy and member participation are areas of difference between IORP's and insurers and this should be reflected in any new rules. A proper impact assessment is necessary on the efficiency and the effectiveness of new governance rules for IORPs in this field.	
65.	<p>TCO agrees with the introduction of fit and proper requirements, but not with those that are stipulated in the Solvency II Directive.</p> <p>Any fit and proper requirements should not affect the participation of members, beneficiaries and social partners in the IORP governance structure.</p>	

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	<p>The "fit and proper" requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of "fit and proper" requirements that are similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of the IORPs. A proper impact assessment is necessary in order to make sure that the requirements are proportionate for IORPs.</p> <p>It is important that the Board as a whole has an adequate level of expertise; it should not be required that each and every member of the Board of the IORP fulfil all "fit" professional expertise requirements. TCO also agrees with EIOPA's assessment that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs.</p>	
66.	<p>Yes, TCO agrees that fit and proper requirements should apply at all times and that there should be procedures and controls to enable supervisory authorities to assess fitness and propriety.</p>	
67.	<p>The IORP could be asked to complete a standard questionnaire on the fitness and propriety of the candidate for the IORP board, to be sent to the supervisor who could then provide the IORP with its advice on the nomination of the candidate. This would avoid the need for an ex-post intervention by the supervisor.</p> <p>TCO believes that these powers should rest with national supervisory authorities, which should exercise them at their discretion.</p>	
68.	<p>TCO welcomes the taking into account of the differences in risk management rules depending on risk sharing mechanism of the pension scheme. However, the response to this issue is not seen as correctly addressed by EIOPA. The risk management should be principle based rather than rule based.</p> <p>TCO also agrees on the fact that risk management system shall cover all risks including risks which can occur in outsourced functions and activities.</p> <p>The non-exhaustive list of the areas that must be covered by the risk management is seen as not relevant. The addition of the sentence "all significant risks an IORP is faced to" is sufficiently meaningful.</p> <p>The principle of risk management must be applied in a proportionate and reasonable manner. The risk</p>	

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	<p>management task must be proportionate to the risks faced by the IORP. However, TCO wishes to point out the lack of clearness on principles like proportionality or definitions of types of schemes. Indeed, a clear answer must be provided on notions like complexity and nature of the IORP. Moreover, since the <i>de minimis</i> threshold provision has been removed, the notion of scale must also be explained.</p> <p>As EIOPA, TCO also emphasizes the need for an impact study to assess the real impact of the new requirements.</p> <p><u>Positive impacts of the proposed principles:</u> More transparency for members through risk management methods introduction in the Statement of Investment Policy Principles (SIPP). More security for members and pensions.</p> <p><u>Negative impacts of the proposed principles:</u> Burden for IORPs and especially small ones. The lack of resources might entail outsourcing and increase in IORP's expenses which will lead to increase of contributions or decrease of pension benefits. Hence, the principle of proportionality has to be applied efficiently.</p>	
69.	<p>TCO is in favor of option 1 and believes it will be more efficient to focus on the risk management function which includes concepts included in the ORSA rather than pile up several requirements that have the same purpose. It will create an accumulation of legislation and requirement which is misleading and too burdensome.</p> <p>The qualitative (intangible risk such as environmental, political and regulatory changes) and long term considerations about risk should be included in the risk assessment as it is proposed in the point 20.2.8 of the Call for Advice 15 on risk management.</p>	
70.	<p>TCO strongly stresses that proper investment rules and efficient risk management are sufficient. The introduction of ORSA will increase the administrative costs for IORPS, members and supervisory authorities.</p>	

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71.	<p>TCO is not in favor of a holistic balance sheet approach. Nevertheless, if such an approach is adopted, TCO wishes to stress that the funding calculations for solvency requirements already cover ORSA provisions.</p> <p>TCO strongly wants to acknowledge the fact that ORSA includes both qualitative and quantitative elements contrary to capital requirement. However qualitative elements are also included in the risk management function. Therefore, the introduction of ORSA will create an overlap of qualitative requirements which are too burdensome and confusing.</p>	
72.	<p>TCO does not believe that the introduction of a whistle blowing obligation of the compliance function is in line with the rights and duties in the field of corporate law, where the main addressee of the compliance obligations is the board of the management. An alternative solution would be to give compliance function a right but not an obligation to report to the supervisory authority.</p>	
73.	<p>TCO is of the opinion a one-size fits all solution must be prevented across Europe for IORP's with regard to the compliance function. The introduction of an independent and qualitative compliance function should be left to the discretion of the IORP itself. The general formula used in the Solvency II Directive could be one of the options to be considered, but not without a proper impact assessment of the consequences if such a function were to be introduced. If such a function is introduced TCO agrees with EIOPA that it should include all legislation with an impact on the operations of an IORP.</p>	
74.	<p>In principle TCO agrees with the introduction of an internal audit function, which should be effective, objective and independent from operational functions.</p> <p>TCO welcomes EIOPA's advice that the proportionality principle should be respected.</p>	
75.	<p>TCO believes that if any whistle-blowing obligation is introduced they rightly should belong within the scope of the compliance function.</p>	
76.	<p>TCO wishes to acknowledge the importance of actuaries and the fact that their advice is necessary.</p>	
77.	<p>No, the current IORP Directive should be the starting point.</p>	

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78.	<p>TCO agrees with the importance of the independence of the actuarial function. Conflicts of interests must be avoided because they diminishing the members/beneficiaries' level of protection and increase operational risks. The independence of the actuarial function should not prevent the IORP from choosing an internal actuary.</p> <p>The independence of the actuarial function must be clearly defined. The term "operational independence" mentioned in the Call for Advice (24.3.24) is interpreted by us as the possibility for the actuarial function to determine the best way of achieving its duties, including the types of instruments used and the timing of their use. It should be clearly written in order to avoid any misunderstanding or bad interpretation. Moreover, the competence to guarantee the operational independence should be left to Member States.</p>	
79.	TCO does not agree with the fact that standardisation of the requirements regarding the actuarial function would necessary lead to cross border activity. Indeed it has been proved that the main hurdles for cross border activity are the differences in Social and Labor Law as well as tax treatment.	
80.		
81.		
82.	TCO thinks that the clarity of fiduciary duties is essential in outsourcing and it should be defined in a written agreement.	
83.	<p>In the point 26.3.4 of the Call for Advice it is stressed that: <i>"to assess the need and importance of having a depositary performing safe-keeping of assets and oversight functions, EIOPA has referred to the current and expected future practices among other financial sectors, namely the UCITS and AIFM legal framework and Solvency II"</i>. TCO regrets that the review of the custodian/depositary function for the IORP is based on the UCITS and AIFM legal framework. Indeed it should be taken into account that IORPs have different governance structure and investment policies than UCITS and AIFM even those without legal personality. TCO wants to acknowledge that AIFM Directive is the latest and most advanced legislative act on the custodian issue and that it should be taken into account. Nevertheless, the IORP Directive should be the starting point for the review.</p> <p>TCO emphasizes that the flexibility and the respect of the subsidiarity principle must be maintained.</p>	



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	<p>Therefore the IORP directive should not be amended when it comes to the appointment of a depositary, leaving to Member States the decision of whether to make the appointment of a custodian or depositary compulsory. TCO wishes to state that, given the heterogeneity of IORPs in the EU, Member States should remain responsible for the appointment regime of IORP. Anyway, according to the OPC report, the appointment of custodian/depositary is compulsory in a majority of CEIOPS members (16 countries).</p>	
84.	<p>TCO is in favor of option 1 because the costs of changing the current IORP Directive will outweigh the potential benefits.  The main positive and negative impacts of the proposed options are:</p> <p><u>Option 1: Maintaining Directive</u>  → <u>Positive impacts:</u>  The subsidiarity principle is respected, so it allows for more <b>flexibility</b>. The costs for the IORP and for the members/beneficiaries will not increase.  → <u>Negative impacts:</u>  Keeping the different regimes between Member states.</p> <p><u>Option 2: Compulsory regime depends on legal form of the IORP:</u>  → <u>Positive impacts:</u>  None foreseen  → <u>Negative impacts:</u>  This option will lead to an increase of charges for the IORP that will be reflected on the members and beneficiaries' contributions or benefits.</p> <p><u>Option 3: Compulsory regime depends on the type of pension scheme</u>  → <u>Positive impacts:</u>  The appointment of a depositary for DB schemes would remain at the discretion of the Member States. The principle of subsidiarity would be at least respected for such schemes.  → <u>Negative impacts:</u>  This option will lead to an increase of charges for the IORPs with DC schemes that will be reflected on the members and beneficiaries' contributions or benefits. This option will lead to uncertainty because of the lack of clearness in the taxonomy of different pension schemes. Indeed, there are many types and pension schemes. As a result, a compulsory regime will force the supervisor to make a distinction</p>	

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	between DB and DC but this task is heavily difficult because a lot of hybrid schemes do not totally fall under one of these categories.	
85.	The appointment of a depository should not be compulsory. The principles of flexibility and subsidiarity should be respected in order to leave this decision to the Member States. The implementation of a compulsory regime regarding the appointment of a depository under the two options will lead to an increase in the fees that IORPs will have to pay to the depository. This will lead to an increase in the contributions or a decrease of the benefits of the members/beneficiaries.	
86.	<p>The written contract will involve administrative costs. Moreover, the elements of the contract are not known yet (level 2), thus the costs could be bigger than those included in the providing of the flow of information. The written contract should not be needed for small IORPs insofar as a relatively low level of information should be needed to perform the depository's function.</p> <p>The role of a depository in terms of safe-keeping will lead to an increase in the fee that IORPs will have to pay to the depository institution.</p> <p>Furthermore, the costs related to safe keeping are not clear yet since the definition of the term "financial instruments" and the type of financial instruments that can be included in the scope of the depository's custody functions is still under discussion (26.2.18).</p>	
87.	<p>The list of oversight functions will be burdensome, notably in the case of a cross-border activity. Indeed, the SSL differ among members states that is why the oversight function and the prospection of information that it implies will entail some costs.</p> <p>TCO does not agree with the introduction of the whistle-blowing function for the depository. The depository should only inform the IORP if any breaches of national laws or IORP rules are revealed.</p>	
88.	The implementation of such general requirements will lead to an additional burden for IORPs. However, the impact is expected to be quite low insofar as these measures are generally implemented at the IORP level.	

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89.	<p>TCO believes that the current IORP Directive lays down an appropriate information provision regime for IORPs and that this does not need to be modified. TCO therefore favours option 1.</p> <p>Adequate information provision from IORPs to supervisors is of the utmost importance for identifying risks and pre-empting or correcting them and for preserving confidence in the system.</p> <p>TCO would point to the difficulties, however, of harmonising information provision requirements. Due account should be taken of the specificities of national pension systems and the powers and traditions of national supervisory agencies</p> <p>TCO would point to the different risk-mitigating mechanisms that exist within many pension funds: the role of trade unions and employers' representatives on IORP boards are an important supervisory role. Members protection, which EIOPA recognises as one of the main goals of information provision (28.3.10), is thus provided by specific mechanisms and TCO therefore feel that it would not be productive to impose additional administrative and financial burdens on IORPs in this field, and to equate second-pillar pension provision with insurance products or third-pillar pension provision. Article 13 of the current IORP Directive already provides for an adequate information provision arrangement.</p> <p>TCO agrees with paragraph 23.3.11 that there is a risk of employers becoming unwilling to provide pensions if the costs of providing pensions goes up. In any case, should new rules be adopted in this area, the principle of proportionality should be respected and cost implications should be taken into account.</p>	
90.	TCO would not welcome convergence of provision of information.	
91.	TCO believes that, for DB schemes, requirements in the current IORP Directive are sufficient and that no additional information is needed.	
92.	The introduction of a KIID-like document for DC schemes could be useful. Its objective is to increase	

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	<p>the understanding of members of pension accrual in the DC scheme, its functioning and the risks. The KIID-like document should be adapted to the nature of the scheme (collective or individual) and to the specific Member State context. TCO believes that the <u>quality</u> and the <u>usability</u> of information are key in the design of the KIID-like document and more generally in information provision to members. Financial education efforts are essential and should be promoted in order to increase members' understanding.</p> <p>Since there is no competition between occupational pension schemes, TCO does not see added value in giving plan members information on the comparative "competitiveness" of the scheme.</p> <p>TCO believes that it will be difficult to draft a common European format for a pre-enrolment document and annual benefit statement, because of the differences in the members states' pension schemes and the specific information requirements based on national SLL. The implementation of the principles regarding information requirements as provided in the current IORP Directive can best be decided upon at a Member State level, as is the case today.</p>	
93.	TCO believes that the risk ranking should change with the time horizon and performance scenarios should vary for different asset allocations, allowing for a risk premium for equity-oriented investment options. It should in any event be clear that this information does not contain any guarantees as to risk and/or performance.	
94.	TCO supports the idea of a personalised annual statement providing members with a good- quality, useful information on accrued rights, fees and possible expected benefits, taking into account national and scheme-specific circumstances (e.g. liability for disclosure of information).	
95.	TCO supports the idea of improving information requirements. Where there are broad similarities between schemes and there is a high degree of commonality between them, it could make sense to harmonise in order to achieve some degree of comparability between schemes for members. TCO agrees with the EIOPA statement in 29.2.79 that Articles 51-56 from Solvency II should not apply to IORPs.	
96.	TCO agrees with the preliminary impact assessment.	