	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:	**THE SOCIETY OF PENSION CONSULTANTS**	
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	SPC is the representative body in the UK for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPC's Members' profile is a key strength and includes accounting firms, solicitors, insurance companies, investment houses, investment	

performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPC is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and services. We do not represent any particular type of provision or any one interest - body or group.

Many thousands of individuals and pension funds use the services of one or more of SPC's Members, including the overwhelming majority of the 500 largest UK pension funds. SPC's growing membership collectively employs some 15,000 people in the UK providing pension-related advice and services.

The consultation paper has been considered by SPC's European Sub-Committee, which comprises representatives of actuaries and consultants, insurance companies, pension administrators and pension lawyers.

General commentary on the EIOPA consultation document, the Commission's Call for Advice and the proposed review of the IORP Directive

We question the basic premises that the European Commission has cited as necessitating the review of the IORP Directive – namely (i) to facilitate cross-border provision and (ii) to 'level the playing field between insurers and pension funds'. The second of these was cited as a reason by Karel van Hulle at the EIOPA conference in Frankfurt on 16th November 2011, although we note that in the EIOPC minutes for the meeting of 14th July 2011, a rather different emphasis was given, namely that the second objective of the review is to: "introduce risk-based supervision, drawing on the Solvency II Framework Directive"

On the first of these, we admire the Commission's ambition to help the development of cross-border pension provision. However, we think this could be achieved by confining the review to those matters (within the call for advice) relating directly to cross-border provision – for example the definition of cross-border activity and what does or does not constitute 'prudential regulation'. We consider, however, that more work is needed on this and the 'rushed' approach taken does not augur well for effective legislation.

The Commission has, in the past, suggested that a more harmonised supervisory structure is necessary to combat regulatory arbitrage. The Call for Advice states that the low number of cross-border arrangements is evidence that more needs to be done to facilitate such provision. The low number of such arrangements contradicts the suggestion that 'regulatory arbitrage' exists or is even a risk – otherwise there would have been a widespread rush to the most 'benign' regulatory environment.

Perhaps the Commission's view is coloured by the perception that this is what could have occurred within the insurance 'market'. The fact that this has *not* occurred evidences the oft-cited response to the Commission that a pension fund is *not* like an insurance product. Which brings us to the issue of whether or not there is a 'playing field' on which insurers and pension funds compete and, if so, whether that playing field is, needs to be, or can be level.

The form, nature and level of pension provision are some things, which can change from time to time – as agreed between the employer and employee (or his or her representative). Such review and adjustment appears to us to be unlikely to exist in the insurer/policyholder relationship; particularly as the latter is a commercial contractual relationship.

Undoubtedly it is possible for an *employer* to enter into an insurance contract to help deliver, in part or fully, a pension promise. (It may be reassuring to the employer, as policyholder, that this insurer's capital adequacy requirements are to be grounded in the supervisory structure of Solvency II.) Alternatively, the employer may decide to 'fund' for that pension promise through a legally separate 'pension fund'. Yet another option is not to fund the pension promise at all, but to make provision (whether partially or fully backed by specific assets) on the employer's balance sheet for that promise. In any event, ultimately the employer is responsible for the pension promised to his employees. Where that promise is at risk of not being delivered – for example were the employer to become insolvent – there is a strong argument that this 'risk' should be adequately communicated with the employee, but we see no need for this to be translated into an additional pre-funded capital buffer to cover that eventuality. Moreover, whilst it is unlikely that there would be a suitable 'alternative' available to the employee, even if he or she were more clearly informed of the 'risk' to delivery of the promise (employers tend to arrange/select one mechanism for delivering the pension

	promise – at least at any given time), adequate communication of the ‘risks’ enable the employee to take whatever steps are available to him to mitigate those risks. For example, through additional (or, if the employee wishes, having considered the communicated risk, alternative and independent) pillar 3 provision. In the UK context, consideration of risk needs to take into account the existence of the Pension Protection Fund. In brief, therefore, there is merit in pursuing the ambitions of improving (a) pension fund governance – including a system for understanding and managing risks within pension funds - and (b) member understanding. However, we do not consider it appropriate, desirable or achievable to impose a truly harmonised capital adequacy requirement on second pillar (supplementary occupational) pension provision throughout Europe.	
1.	In general yes. However, at the outset we must emphasise that we consider the time that has been permitted for consultation has been woefully inadequate, given the seriousness of the issues concerned and the wide ranging matters under consideration.	
2.	As we said in response to the consultation in July, we question whether the current exemptions should automatically be assumed to remain. We are aware that EIOPA is necessarily acting within the constraints imposed on it by the European Commission. However, we consider that the points at issue are too important for debate to be stifled in this way. Indeed, we consider it absolutely necessary to bring some of these points explicitly to the attention of the European Parliament, in order that there is an opportunity to have these aired in a democratic forum. Otherwise, we believe there is a significant risk that the European Parliament will be kept unaware of many key issues by reason of the Commission passing on a ‘filtered’ version only of the views expressed in this consultation process. We believe that a more fundamental review of the coverage of the Directive is intellectually more robust. We believe that EIOPA and the Commission should consider extending the scope of the Directive to all occupational retirement provision. After all, the European Court of Justice has long	

	since held the view that pension provision is a form of deferred pay. It does not make sense for one form of pension provision to be included in a new 'risk-based supervisory system' and for another form to be excluded. We appreciate that politically this might seem attractively expedient to the European Commission, but we do not believe that political expediency should be the driver of European Union policy. At the very least, all arrangements currently excluded from the scope of the Directive should be included in the analysis under a detailed and quantified impact assessment and cost-benefit analysis. Currently, unfunded arrangements and those "guaranteed by a public authority" are excluded from the Directive. In the light of the current concerns about sovereign debt in many European countries, public authority guarantees might not be thought as secure as they were when the first IORP Directive was agreed. Against such a wider consideration of the Directive's scope, in the UK context, we suggest that there are strong reasons why so called group personal pensions should not be within scope. Firstly, since they are already covered under the Life Directive there would be regulatory overlap and, therefore, scope for confusion and uncertainty, if they came within the scope of the IORP Directive. Secondly, although group personal pensions are established with the support, often financial and/or in other forms, of an employer, they are, in fact, simply a collection of individual legal contracts, to which the employer is not legally party. It would therefore be difficult, through the IORP Directive to impose duties on an employer, in respect of an arrangement, to which it is not party.	
3.	We would prefer a different approach, with a review being undertaken as to whether all pension arrangements – funded, unfunded, statutory-backed and small arrangements etc… - should be brought within a 'risk-based supervisory' structure. We do not prejudge the outcome of that review. We merely recommend strongly that such a review should take place.	
4.	Adopting the approach suggested in our response to 3 above should mean that none is excluded – from a review. Assuming that sufficient time is given for such a review, there would appear to be the attractive goal of ensuring that there are no gaps.	

5.	As the draft response suggests at 5.3.5, amongst other things, tax differences between member states make it currently unlikely that cross border schemes will make more than the very limited progress, which they have so far made. We therefore see very limited practical value at present in changing the definition of cross border schemes and a negative impact, in that the changes could undermine the work which member States, including the United Kingdom, have undertaken to build workable regulatory structures around the current requirements. As a general principle, if there is to be a consistent EU-wide definition, in our view, the social and labour laws of the country, where a member is currently working, should provide the regulatory benchmark. However, the whole question is fundamental to the aim of facilitating the Internal Market through cross-border provision and should therefore be the subject of a separate and more detailed consultation. We are also aware that there are differences in interpretation as to what is an occupational pension scheme at all. Such differences in interpretation mean that amending the definition of cross-border activity will, in those cases, have no impact whatsoever. There will remain a fundamental and unsatisfactory impasse, whereby one country considers cross-border activity to be occurring – and hence the Home State IORP needing to comply with the Host State social and labour law, whereas the supervisory authorities in the Host State do not recognise the Home State IORP as an IORP and thus refusing to pass on any details of their social and labour law.	
6.	We agree that the principles should be included in Level 1 text and hence should be subject to full scrutiny by the legislative process – within both the European Parliament and the Council of Ministers. Moreover, they should then be assessed under a full Quantified Impact Study. In general we consider that it would be appropriate to allow Member States to impose ring fencing measures rather than requiring them to do so. This seems more in line with the notion of the application of intelligent 'risk-based' supervision, with supervisors being able to decide whether action is needed.	

7.	We consider that more time is needed to accurately assess the impacts. Whilst we have no reason to consider EIOPA's assessment flawed, we are very much aware that this matter would merit further reflection.	
8.	We are opposed to the notion of mandatory ring-fencing, whether for cross-border activity or otherwise. In relation to the proposal for mandatory ring-fencing at the outset of cross-border activity, this would detract from one of the potential attractions of cross-border activity, increase costs and be counter to the stated objective of facilitating such activity. We do not consider that ring-fencing is desirable even in cases where there are differences in investment rules between different Member States. Again, to do so would be likely to further restrict, rather than facilitate, cross-border activity. This would seem counter to the aims of the Internal Market.	
9.	Again we feel that the consultation period is far too short to consider the potentially significant proposal to interfere with domestic 'privilege' rules – promoting the interests of one party (whether members, those employed – in countries where this occurs – by the pension fund/IORP or tax authorities over those of others).	
10.	Yes.	
11.	We consider that there will still be likely to be dispute/disagreement between Member States as to what does/does not constitute social and labour law. We are not clear, beyond the Budapest Protocol for determining what can be done to resolve such differences. Whilst the Budapest Protocol might provide a means to determine disputes between supervisory authorities, we do not believe it does anything to address differences in opinion between sovereign Member States. As facilitating cross-border activity is one of the main objectives of DG MARKT, we consider it would be appropriate to consider this issue in far greater detail and therefore over a far longer period than permitted under the current rushed legislative proposal. We would think that the Commission, the Parliament and the Council of Ministers would all be keen to ensure that IORP II actually delivers the	

	desired benefits and the current proposals would still seem to fall a long way short of this aim.	
12.	Whilst we appreciate the Holistic Balance Sheet has some appeal, we consider that it has some significant flaws – not least of which is the term 'Balance Sheet', which clearly has accounting connotations. Expanding on this view, the headings 'Assets' and 'Liabilities' are also potentially misleading (although we note that the figure at 8.3.55 has 'Equity+' as a heading instead of 'Liabilities' and we are unclear as to why this is). That said, we welcome a simple pictorial representation, which helps to show the various risk mitigating measures, which can be employed within differing national pension systems. (This might well be an appropriate template for use in communication between employers, pension funds and members/participants, so as to ensure clearer understanding.) The problem lies in trying to place a capital value on some of those measures. For example, where a Member State's pensions system permits an IORP to reduce benefits in cases of extreme stress, how can one value this when one does not know when that reduction might be triggered and the level to which the reduction can be made? In extremis, it would seem feasible to reduce a benefit to zero – thus negating whatever else was shown on the other side of the balance sheet. Similarly, valuing an employer covenant *might* technically be possible but there is unlikely to be consensus on how this can be done equitably and consistently across different entities in different Member States without being hugely costly. What seems a more likely outcome would be that some 'formulaic' approach would be taken, which would give rise to a figure. That figure, however, is likely to be little more than 'window dressing' and of no material benefit to the membership of the pension arrangement sponsored by that employer. It will not represent 'cash' and nor should it. Even were it to represent 'cash', recent financial events have shown us that 'cash' is not always guaranteed (even ignoring the effects of inflation); even less so is the debt of sovereign Member States. Where the attraction of the Holistic Balance Sheet (or something like it) lies, is in helping to explain to participants to what degree their pension benefits are 'secure'. (Against the backdrop of the possible insolvency of *Member States*, the notion of secure must also be seen as a relative rather than absolute security.)	

	As drawn, the Holistic Balance Sheet appears to be an attempt to reinforce the apparent belief of the Commission technocrats that insurers and pension funds are similar 'institutions'. If one starts from this premise, the 'liabilities' side of the equation should look like that for Solvency II – with three components, the best estimate of future cash flows, a risk margin (however assessed) and a Solvency Capital Requirement. Once this false premise is embedded, it becomes necessary to try to think what could be on the 'balancing' side. We appreciate that EIOPA's terms of reference were not to consider *whether* Solvency II is appropriate as a cornerstone of the risk-based supervision of pension funds, but *how* to adapt it so that it is. To be clear, therefore, we intend no criticism of EIOPA. What we intend, however, is that the legislators – the Commission, the members of the European Parliament and the Council of Ministers – step back and consider what it really is that is needed here. Certainly the principle of 'risk-based supervision' seems desirable. Certainly the transparency of the security of the pension promise – to members/participants – seems desirable. What is not desirable is the single-minded drive to achieve a veneer of cast-iron security, which cannot possibly be achieved and which will cost (as Solvency II has) many €millions to introduce. In summary, in the context of the consultation, we appreciate EIOPA's attempt to shoehorn the varying national pensions systems into an apparently consistent framework. However, we think that the starting premise is flawed and the message must be given to the Commission, the European Parliament and the Council of Ministers that the pillar 1 provisions of the Solvency II Directive should not and cannot be applied to the heterogeneous pension systems across the EU.	
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34.	We disagree. The calculation of Own Funds for (re)insurance undertakings depends upon a notional reference undertaking that would be prepared to assume the liabilities of the (re)insurer. Despite the notional basis of the reference undertaking, it is possible to see the rationales given that (re)insurance entities are commercial organisations, which engage in M&A activity. UK IORPs do not engage in such commercial activity, although there is an actual counterparty for UK pension obligations in the buyout market. Consequently, the application of Articles 87-99 would likely lead to buyout cost becoming a proxy valuation of liabilities. If this is the intention it would be simpler to legislate for Own Funds sufficient to cover the buyout cost.	

	However, we believe that this outcome is highly undesirable in the UK pensions market, where IORPs and forms of pension arrangement operate successfully in parallel.	
35.	Subordinated loans are not relevant in the UK. It is inappropriate for a UK commentator to give an opinion as to the use of a risk-mitigation mechanism available in another Member State. That is a matter for the supervisory authorities and legislature in that Member State alone.	
36.	It should be left to national supervisors whether to specify a probability. We believe that it is undesirable to introduce a uniform security level for IORPs across Europe. Consequently, we agree with EIOPA's decision not to recommend a specific probability.	
37.	We disagree. Clearly different risks are faced by IORPs operating in different EU member states. Therefore, it should be left to national supervisors to specify the confidence level and the time horizon.	
38.	We are strongly of the view that this is a misguided proposal. The use of a "risk free" discount rate would force IORPs to employ investment strategies, which will severely hamper their ability to seek higher investment returns, which is an entirely reasonable aspiration bearing in mind the long term nature of the liabilities being funded for. Moreover the imposition of a risk margin based on cost of capital methodology is inappropriate for IORPs, which have entirely different (and, in the UK, clearly stated) roles and objectives to (re)insurers. While it is reasonable to ask insurers what it would cost them to borrow the money to cover the cost of a one in 200 year event, it is practically impossible (and undesirable) to read this requirement over to the IORP sector.	
39.	Three-yearly.	
40.	This is irrelevant to the UK. Regulatory intervention (including the potential for enforced winding up) under the existing regime would be triggered long before such a low funding level was reached.	
41.	The UK Pension Protection Fund (PPF) is clearly a valuable member protection mechanism, which	

	suggests that it should be valued as an asset or, as a minimum, communicated explicitly to IORP members. Valuing the PPF as an asset is clearly a greater challenge. The analogy to an insurance asset is strong in the UK. The PPF expressly backstops a large proportion of scheme liabilities in the event of employer default. It seems to us conceptually misconceived to try to shoe-horn this into employer default risk measurement.	
42.	We disagree. This would have the practical effect of eliminating DC provision via IORPs in the UK, to the detriment of members. Sponsors would immediately switch to contract based schemes, where insurers pass on the costs of maintaining operational risk capital to members in a non-transparent way. In practice employers (whether as the result of regulatory action or not) usually pick up the bill for losses occasioned by operational failures, although the UK legislative framework provides for redress by any third party, which is instrumental in any such loss. If employers are forced to reserve for these contingencies, they will walk away and the UK DC pensions market will become less competitive – which is unlikely to be in the interests of members/participants.	
43.	We are strongly of the view that the UK supervisor's powers are more than sufficient under the existing regime. In particular the Pensions Regulator has the power to order the wind up of pension schemes.	
44.	We are strongly of the view that the current UK regime works well and counsel against the imposition of one size fits all rules.	
45.	We are strongly of the view that the UK supervisor's powers are more than sufficient under the existing regime.	
46.	We are strongly of the view that the current UK regime works well and counsel against the imposition of one size fits all rules. We do not agree that the form and content of recovery plans should be specified at the pan-European level.	

47.	The prudent person principle provides a wide-ranging and effective method of ensuring appropriate investment decisions and controls and therefore additional provision is unnecessary. The prudent person principle can either be used as an over arching general principle or can be easily tailored (by National Supervisors) to reflect the specific situation in a Member State. It is both flexible and robust making it a good method of control. No additional provision is therefore needed. The concept of "solvency needs" in an insurance context would be interpreted by reference to the insurer's in force business written on the date, on which solvency is assessed. The concept does not work when applied by analogy to a pension fund, which has liabilities still accruing. It is also unrealistic to expect pension funds to have the kind of technology typically used by insurers when assessing the appropriateness of their assets to scheme liabilities.	
48.	We do not believe that Members States should have the ability to impose additional investment limitations which go beyond any restrictions laid down in the Directive. There seem to be no reasons as to why members in specific jurisdictions should be denied access to investments which comply with the requirements of the Directive and no reasons as to why Member States would need such powers.	
49.	DB and DC schemes are structurally very different with different risk profiles and different needs. Any investment regime should either treat them as such or should be at a high enough level to invoke principles without imposing the detail. In relation to DC schemes it is important that members have an appropriate choice of funds and that the main features – including risk profile – are communicated adequately This choice should be respected. In relation to default funds within DC schemes, the fund(s) should be appropriate to the risk profile of, at least, the average member, who, it is to be expected, will have limited knowledge of investments, taking account of the expected duration of that member's retirement income.. Sponsors of defined benefit schemes make a promise to members and those running such schemes should be making their best efforts to ensure that this promise is honoured. The investment profile should reflect this best effort and, where those running the scheme do not have sufficient knowledge	

	(for reasons outlined in the consultation paper) they should be able to rely on those who do have that knowledge to advise them. The nature of investment provision in DB schemes should be based on the fact that pension liabilities are long term liabilities, which would never (under normal circumstances) materialise in anything other than a long term spread. Investments should be designed to match that long term spread and this is more important than immediate short term liquidity – the likelihood of such schemes needing to match liabilities in the short term is extremely limited and trying to do so would damage the long term investment profile of the scheme. **We believe that article 18(1)(b) of the existing IORP Directive contains workable over-arching principles which have stood the test of time for defined benefit IORPs.**	
50.	The negative impacts on DB schemes should be explored further – especially the danger that the changes could lead to large numbers of such schemes closing down on affordability grounds as assets could not be used in a method appropriate to meeting the long term liabilities of the scheme.	
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53.	We believe that the supervisory authority should operate in line with the first principle of Solvency II Directive Article 29, namely that supervision should be based on a prospective and risk-based approach. Also, as Article 29(3) states, supervision should be applied in a proportionate manner – indeed EIOPA at 14.3.5 recognises that proportionality is even more important for IORPs. What is not explained, however, is what EIOPA (and the Commission) means by proportionate. Transparency and accountability are also essential. However, the requirement that supervision should involve verification on a continuous basis is not appropriate for sponsor-backed occupational pension schemes. As recognised in EIOPA's CfA response, occupational pension schemes are not run as businesses. Accordingly, they do not operate on the basis of ongoing reporting; data is processed on an annual or triennial basis and governance is typically conducted on a monthly or three-monthly basis. More frequent reporting and continuous verification could make schemes unworkable in practice and	

	so deter employers from continuing to operate them – see also our answer to question 54. As mentioned at 14.3.6, it is essential that the wording from article 29(1) is not merely replicated in a revised IORP Directive. Rather, the wording should be modified to amend 'continuous' to something more appropriate to IORPs.	
54.	Paragraph 2.6.5 of the response identifies three key differences between IORPs and insurers which should impact on the level of supervision. The first of these is that, unlike insurers, IORPs have a social and employment context. A feature of this is that legislation applicable to that area is applied to the IORP. For example, UK legislation on consulting employees on certain changes to their working terms and conditions extends to prescribed matters relating to their occupational pension schemes. Another feature is that the employers – as well as scheme members – are involved in the supervision and operation of the occupational scheme. More importantly, there is another (fourth) key difference which needs to be taken into account. This is where – as in the UK – the provision of an occupational pension scheme is voluntary on the part of the employer. Unlike an insurer – where adherence to a regulatory framework is a prerequisite of it operating its business – employers do not have to provide pension schemes for their workforce and submit to the associated regulatory burdens. They can run their businesses without these. The supervision of the activities of sponsor-backed occupational pension schemes and insurers therefore needs to reflect this fundamental difference. Whereas an intensive, continuous verification basis is a day-to-day accepted model of running an insurance business, it would be too burdensome for employers and would be likely to deter them from providing an occupational scheme. A major pillar of supervision in the UK is based on scheme managers, trustees, professional advisers and members reporting breaches to the Regulator. This incident-based approach, backed by legislation requiring reporting in prescribed circumstances, avoids day-to-day interference in the operation of the employer's business.	
55.	We agree, with the principle of proportionality being applied so that the national supervisory authority can decide the appropriate level and frequency of testing, in particular having regard to cost and employer time involved in collecting data to carry out testing.	

56.	We agree: UK pensions legislation already includes adequate sanctions, details of which are visible to the regulated community.	
57.	The supervisory authority should be able to make public the imposition of penalties in appropriate cases.	
58.	There should be an emergency power for the host state to act without going through the home state but the home state supervisor should be informed simultaneously of action communicated to the IORP. However, we see no reason to amend article 20(1) of the existing Directive, which EIOPA freely admits is untested. We disagree, therefore, with EIOPA’s conclusion at 15.4.5 and 15.4.6.	
59.	As noted in paragraph 16.3.2 of the response, a supervisory review process is implicit in the IORP Directive. We believe that this allows flexibility for states to design a process to suit their types of scheme and align with national legislation, particularly employment and social security law, which significantly impact on the operation of pension schemes.	
60.	In the case of defined benefit schemes, we believe that the supervisory authority should have the power to impose additional funding requirements. This is a system which we believe works successfully in the UK, where the Pensions Regulator examines the scheme funding level in line with a statutory funding objective. This objective is scheme specific – enabling individual schemes to adopt a funding strategy which suits their circumstances – but is underpinned by an overriding principle of prudence in legislation. The Regulator has power to impose contributions on the employer, for example, if it considers that the technical provisions, on which the employer and trustees propose that the scheme be funded, are imprudent. Ultimately, the Regulator can modify or stop future accrual of benefits. In the case of wholly defined contribution schemes, there are no funding requirements and so the issue of "capital add-ons" does not arise. All that is necessary is regulation to enable enforcement of the employer's existing obligations to make the agreed contributions to members' accounts.	
61.	Article 13 of the IORP Directive requires supervision of outsourced functions and allows flexibility for	

	states to design the means to achieve this. Rather than a more prescriptive approach, we prefer the current flexible approach, as it is likely to result in a regime which is more closely targeted at the issues which are relevant in each state. Elements of Article 38 of the Solvency II Directive could be included, but this should be on a non-exclusive basis.	
62.	We agree with the proposed clarification of the IORP Directive in the cases of cross-border service providers, chain outsourcing and the definition of home state. It would be helpful to have clarification of what 'registration' means. We assume that 'registration' through the national register of pension arrangements, if a member State has one. Again, we favour casting any supervisory process in wide terms to allow the most effective, focused local response.	
63.	We agree that governance provisions should be added and welcome the proposal that the revised directive should provide for flexibility in this area with an overriding proportionality principle so, for example, the requirement to review written policies at least annually (as in article 41(3) of Solvency II need not be adopted. We also agree that policies adopted for the IORP should not be required to be submitted as of course to the supervisory authority. As noted in paragraph 18.3.16, the responsibility for governance must remain with the IORP and current systems where employees participate in – and have some responsibility for – governance should be allowed to continue. The authority will have powers of intervention and can call for the policies if required.	
64.	The proposal to adopt a remuneration policy is sensible in the states where IORPs employ staff. This would rarely impact in the UK where IORP senior management would typically be employed by the sponsoring employer or be a professional services firm.	
65.	We agree there should be broad principles of good governance, covering, amongst other things, the propriety of management and personnel exercising key functions. The way in which these principles are applied should be the responsibility of the IORP. In practice in the UK where, as already mentioned, the sponsoring employer's staff will typically exercise management roles in the IORP, one of the ways in which these principles will be applied is by establishing procedures dealing with conflicts of interests. By their nature, these conflicts are largely peculiar to the employer's business and organisation and so the legislation needs to be flexible enough to allow the most effective arrangements to be put in place.	

66.	We agree with paragraph (a), but it must be clarified that this relates (at least in the fitness strand) to the management body as a whole, rather than to each individual member of the management board. In particular, rules on 'professional qualifications' should not rule out participation of 'lay members' representing the wider pension scheme population. The supervisory authority should not have to routinely approve the suitability of individuals – this would be unworkable in those Member States where IORPs number in 100s or 1,000s: rather it should have the power to call for information and assess suitability if the circumstances suggest that there may be an issue.	
67.	If, on an assessment as a result of an issue arising (as mentioned in our response to question 66), there should be a power for the authority to remove an individual from office. Responsibility for supervising and ultimately dismissing other staff and external service providers should remain with the trustees/scheme managers.	
68.	We agree with the proposed risk management principles and support the non-exhaustive list and applicability approach. The proposals reflect protections which are already in place in the UK: in particular, legislation governing scheme investment functions, accounting and internal controls and reporting to members and the authorities. In a pure DC plan the negative impact of doing nothing (option 1) could be significantly detrimental to members, who normally bear all the investment risk so we agree that the risk assessment needs to focus on members. However, we do not think this should be based on rules in the agreement between the IORP and the employer/employee. Such an agreement may not cover this aspect and, even if it does, risk should be assessed on a non-exhaustive and topical basis.	
69.	No. We do not believe that there should be prescribed requirements as to financial assessments by schemes over and above periodic funding assessments. Funding assessments are quantitative and currently relatively straightforward for employers and schemes to perform, usually employing an external actuary. By comparison, a prescribed ORSA would in our view be onerous for employers and schemes. It would extend to the wider, longer-term projected position, including an assessment of the value of the sponsoring employer's covenant and probably including a stress-testing approach, taking into account possible scenarios for changes in investment strategy and general financial conditions. Inevitably, such an approach would involve approximations and a degree of qualitative assessment. In principle, pension schemes should carry out this type of assessment as part of the	

	scheme's ongoing risk management processes but the form and content should not be prescribed. The assessments need to reflect the circumstances of the scheme. A flexible risk-based approach, as referred to in question 69, should be allowed to continue.	
70.	It is not clear why question 69 was asked, if the answer is assumed to be yes. Where, in a defined contributions arrangement, the risks are borne by members, we believe that legislation covering reporting and scheme governance is the appropriate method of assessing risks and we do not see that a separate requirement for an ORSA would add to members' protection.	
71.	An ORSA type of assessment would be consistent with a holistic balance sheet approach but, as explained in our answers to questions 69 and 70, we do not believe that a prescriptive ORSA style approach is appropriate. In brief, we resist the notion that the ORSA provisions of Solvency II have any benefit or relevance to IORPs.	
72.	If there is to be a requirement that IORPs must have a compliance function to assess the effectiveness of their internal control system, it is very important that IORPs should have maximum freedom as to how they achieve this (e.g. by assigning the function to a member of staff, a member of the board of directors/trustees or outsourcing it). Any whistle-blowing obligation, which is imposed, must also be sufficiently adaptable to remain appropriate to the different ways of delivering the compliance function. Without this flexibility there would be a significant risk that this requirement could place an excessive burden upon some IORPs given their diversity of form.	
73.	If there is to be a requirement that IORPs have a compliance function it would be reasonable that its scope should extend to all legislation with an impact on the operations of the IORP.	
74.	The wide range of IORPs in terms of form and size means that any requirement for the internal audit of the systems of internal controls and governance of an IORP must be proportionate, providing IORPs with maximum flexibility as to how they deliver the internal audit function.	

75.	Any whistle-blowing requirement should also be very flexible, allowing for the different, proportionate ways of delivering the internal audit function.	
76.	It should be for legislation at member state level, in conjunction with national professional bodies for the actuarial profession and IORPs themselves to define the role and duties of the actuarial function of IORPs.	
77.	No, the requirements of Solvency II are not the correct starting point for the actuarial function. There is huge variety in the form of IORPs and they are materially different institutions from insurance and reinsurance undertakings. Any requirements regarding the actuarial function need to cater for the diversity of IORPs and should be developed as described under 76.	
78.	It is important that the actuarial function should be independent from the IORP, but the extent and nature of this independence should be defined at member state level, in particular by reference to the professional conduct rules laid down by the relevant professional body for the national actuarial profession.	
79.	We agree with the analysis of the two options, but our preferred option is to leave the IORP Directive unchanged in this regard. There is no evidence that the existing regime is in any way deficient.	
80.	We suggest that the fundamental principle must be that, provided the IORP takes appropriate safeguards when outsourcing services, any liability for the outsourced services should be transferred to the provider of those services. The type of appropriate steps envisaged would be selecting a suitably qualified provider, conducting due diligence on the selected provider, ensuring adequate contractual protections/obligations and monitoring compliance with them. We agree that the IORP should remain legally responsible for providing the relevant pension benefits but, if particular services have been correctly outsourced, that fact should be a defence against legal liability for the IORP, unless the provider's resources are insufficient to meet any residual costs of rectification.	
81.	No. Due to the diversity in scale and form of IORPs it would be inappropriate to standardise outsourcing processes across different member states. We also do not consider that this would have	

	the effect of increasing cross-border activity. If EIOPA considers it will, we would be very pleased to see the evidence on which it bases this assertion.	
82.	The minimum outsourcing contract elements will need to be determined by the directors/trustees of the board of the IORP on a case by case basis, having regard to what is appropriate in the circumstances (given the diversity in size and form of IORPs). Typical key contract areas will be termination, liability, service levels and data protection.	
83.	We favour option 1, leaving to member states the decision of whether to make the appointment of a custodian or depositary compulsory. The diversity in terms of a scale and form of IORPs means that this decision is best left to member states (to decide what best suits the needs of their own occupational pension systems).	
84.	We have no specific comment on the positive and negative impacts of the proposals except that it is vital that a prescriptive framework regarding the requirements for depositaries and custodians is **not** imposed. This is because it could result in the imposition of inappropriate and burdensome requirements on some IORPs (because their diversity in terms of size and form was not taken into account). We agree that a consequence of drawing on the principles of the UCITs and AIFM Directives regarding the appointment of depositaries and custodians could result in there being instances of even tougher requirements applying to IORPs than under Solvency II	
85.	Any options other than option 1 could add significantly to the cost burden for certain forms of IORP, resulting in a negative impact on members' outcomes.	
86.		
87.	The minimum list of oversight functions is a reasonable one, although it should be for member states to decide to what extent they should be included in their requirements for the appointment of a custodian or depositary.	
88.		
89.	The analysis of the options appears to cover the issues, which can be expected to arise and no	

	significant issues appear to have been missed. However, some issues may require increased prominence and additional consideration such as the impact of increased costs on supervisors, schemes and, ultimately, members.	
90.	Whilst there may be some areas where convergence of information would be appropriate in most areas the information actually required by supervisors must be specific to the jurisdiction (the circumstances, climate and pension arrangements found in that jurisdiction). We presume that differences in information requirements are considered to be a barrier to effect cross-border operation. If this presumption is correct, then we are not convinced that there is evidence to support it. We believe that individual supervisors are best placed to know the specific issues and areas of concern within their jurisdiction and the sort of information needed to monitor these. To require Supervisors to collect information, which is not relevant or necessary, will simply add to costs and increase the amount of data being submitted – this in turn could result in identification of potential problems being delayed or missed altogether, having the opposite affect to that intended. Any convergence of information to supervisors should be given a great deal of consideration prior to implementation and only in areas which are relevant to all supervisors should convergence measures be implemented.	
91.	The requirements already in place for DB schemes cover the principal issues and we consider that no significant additional information is required. Further it is arguable that some of the additional information proposed for DC schemes would be unnecessary or inappropriate.	
92.	The UK already provides much of the information which would appear in the proposed KID and has a great deal of experience in gauging what works for consumers, what is necessary from a regulatory perspective and what may be too complex or problematic to include. Indeed there is evidence to support the view that providing too much information is detrimental to member engagement. Rather than starting from a blank page, the experience of Member States which already provide such information should to utilised.	

	The choice of an IORP rests with the employer rather than the individual – with schemes linked to employment, the options available to individuals will likely be limited. Any requirement for comparison would be at the employer rather than member level and this will limit the need for comparison information in a KID. Most of the choices available will be internal to the scheme (i.e. choosing different options within the scheme). Some information beyond investment only could be useful to members as a 'quick guide' but two pages would significantly limit the amount of useful (and regulatory) information which could be included (especially if this were to be presented in a useful pictorial form). This would be especially true where the scheme in question contained a number of different options (such as a wide range of fund choices) which increase the ability to 'tailor-make' the product but add to the complexity of choice.	
93.	Risk/reward does vary over time but other options (and features) add to the complexity of the investment situation (such as different forms of life-styling and time-based risk management). The situation will also vary with how long the individual remains active in the scheme (rather than being a deferred member), how much additional contribution they make, what their long term risk strategy is etc. The number of potential variables involved in ascertaining an accurate investment risk profile are such that anything other than a basic risk comparator soon becomes virtually meaningless without full, individually tailored, professional advice. To avoid this complex, and arguably unnecessary, level of information risk comparisons should be kept simple and understandable – pitched at an appropriately high level.	
94.	A personalised annual statement, such as those utilised in the UK, allows the individual the opportunity to make informed decisions about their retirement savings. However the information is only of use if members actually read it and anecdotal evidence suggests that the shorter the document is the more likely people are to read it. Therefore there is an important balance to be struck between useful, relevant, information and overloading individuals with too much information (which is likely to result in them not reading any of it).	

95.	Some basic information may be appropriate for harmonisation – there are some underlying similarities. However due to differences in product design, culture and options within Member States minimum harmonisation would be appropriate. In most, if not all States, retirement provision is tied into the local taxation system and this leads to a number of differences, which would need to be reflected in the information given. It is vital that information to members is succinct and relevant – this is more important than harmonisation. Over-harmonisation will lead to members receiving information which is not appropriate, relevant or useful and this would be counter productive.	
96.	We would agree with much of the impact assessment, but would suggest that the potential negative impacts of providing members with too much information which is either irrelevant, inappropriate or overly complex is also taken into account. The primary consideration must be the benefit to retirement scheme members – encouraging and reinforcing retirement provision as a positive step. Hoping that members will read information, despite length, complexity or lack of relevance, would be entirely naïve and counter-productive to the aim of increasing member protection through the provision of harmonised information. Minimum harmonisation which provides members with the relevant investment risks, warnings and information in a way suitable to the circumstances of the Member State would be the best way to achieve the desired member protection.	