	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:	**Towers Watson** Watson House Reigate Surrey RH2 9PQ United Kingdom *Contact: Mark Dowsey; mark.dowsey@towerswatson.com* Towers Watson is a global professional services company with operations in many European countries. From these various operations, we provide services to many of the managers and sponsors of the largest pension funds in Europe. This response is written primarily from a UK perspective.	
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).

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- ⇨ 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.
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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
Question	**Comment**	
General comment	We have taken the opportunity in this section to provide, in effect, an executive summary of the points that we make in detail in our responses to the specific questions raised. We have grouped our general comments under several headings: 1. Timescale for consultation 2. Rationale for the review 3. Starting point for the review 4. Proportionality 5. Robust, quantified impact assessments **Timescale for consultation** As we stated in our response to the first consultation in July/August, Towers Watson believes that the Commission's aspired timescale for reviewing the IORP Directive is unnecessarily short. The issues at stake are so wide-ranging and important for second pillar provision, that a far longer consultation process is absolutely essential. In particular, we believe that a rushed review without adequate opportunity for further consultation and impact assessment could ultimately harm rather than support workplace pension provision throughout the EU We consider that the following areas warrant particular care in trying to establish the consequences of the proposals. It appears to us to need longer for each of these issues to be considered in sufficient detail: • **The definition of cross-border activity**. The proposal might go some way to achieving harmonisation of the definition, but we think that some terms still offer scope for confusion. There are also fundamental issues that have not been addressed, such as developing a common understanding of what is or is not a 'pillar II occupational pension'. Issues relating to what is or is not Defined Contribution – hence reference in the consultation to 'pure' DC - are clearly known by EIOPA and the Commission, but there is no attempt to address these. We believe that there would be merit in doing so	

- **Prudential rules**. Although CfA4 is primarily concerned with cross-border activity, its ultimate impact could be far greater as it seeks to tease out the divide between national powers and those of the European Commission (EC) in relation to pensions issues. Once determined, this could give greater scope for the EC to intervene in what might naturally be considered purely domestic matters. We are concerned that some stakeholders might be unaware of this and, consequently, will not have given this section the attention that it requires.

Rationale for the review

The Commission's legal power to make or review an IORP Directive was initially to create, and now to develop, a single market in occupational retirement provision. In this regard, the Commission suggests that an absence of widespread cross-border pension plans evidences failure of the existing Directive. This conclusion is unsubstantiated and in our opinion incorrect.

In the recent past, the Commission has suggested that a more harmonised supervisory structure is necessary to combat regulatory arbitrage. The low number of cross-border arrangements contradicts this suggestion. Had such arbitrage existed would there not have been a rush to the most 'benign' regulatory environment? In the world of insurance, differences in the supervisory regime for insurers might have led to such regulatory arbitrage, due to the inherent 'similarity' in insurance products in one Member State with those in another. However, with pillar II occupational pension provision, this is clearly not the case.

We acknowledge that it is possible to further facilitate a single market by any reasonable non-obstructive measure (this will always be the case), but there is no evidence of current significant demand for cross-border provision, nor that that demand would be prompted by greater harmonisation of the supervisory regime for pension funds. Moreover, it is evident from EIOPA's draft response to the call for advice that far more thought is needed in relation to those elements seeking to amend the Directive to facilitate cross-border provision. At the moment there appears to be a distinct likelihood that some of the proposals have the potential, to a greater or lesser degree, to frustrate the development of such arrangements rather than assist it.

Starting point for the review

Although we agree in principle that it is appropriate to review the IORP Directive, it is not obvious to us that there is an imperative for significant change. The existing IORP framework has not contributed substantially to the financial crisis. There is also a possibility that greater harmonisation of solvency requirements could potentially exacerbate issues relating to pro-cyclical behaviour and, hence, help create systemic risk. Although the principle of comparability of pension systems from one Member State to another, or from insurers and banks to pension funds, may be desirable, it should not be an objective that overrides other considerations. Moreover, the scope of any such comparability needs to be clear.

In para 31 of its report on the Green Paper proposals (of July 2010) the European Parliament agreed with the Commission that "A **high degree** of security for future pensioners, **at a reasonable cost** for the sponsoring undertakings and in the context **of sustainable** pension systems, should be the goal." [our emphasis]. The report goes on to state that proposals for a solvency regime for pensions must recognise that "risks in the insurance sector are different from those faced by IORPs". The European Parliament clearly concludes that the mantra of "same risk, same capital" is misleading – as the risks in pension funds are not the same as those in insurance undertakings.

We consider that Solvency II in its pure form might be a reasonable starting point for some, but by no means all, of the risk-based supervision elements underpinning a new IORP Directive.

We agree with the Parliament that IORPs are different from insurers and, in particular, we do not believe it is appropriate to have a Solvency Capital Requirement for UK IORPs. We expand on the following in our response to question 38, but summarise our view as follows: –

- adding a notional SCR onto the existing funding shortfall - increasing the reliance on employer covenant - does not obviously improve outcomes
- IORPs cannot quickly change their capital base to reflect changes in the SCR. Any application of a risk-capital approach to IORPs should therefore be proportionate to the range of actions that are possible
- IORPs should not be required to hold more assets than the cost of buying-out their liabilities (ie transferring the liabilities to an insurer)
- the Pension Protection Fund (PPF) 'insures' against default for a significant proportion of IORPs' liabilities
- the calculation and reporting of the SCR is an onerous part of the Solvency II regime for insurers. For

many IORPs that are a fraction of the size of the average insurer, with limited governance budgets, it would be disproportionate

We believe that the focus of the regime should be to set an appropriately-prudent long-term technical provisions target, with a flexible (but rigorous) approach to reaching the target implemented by national regulators.

We consider that flexibility is required to recognise the very significant differences inherent in the national pension systems across the EU. If flexibility is not built into the new regime, then the objective of harmonisation could well be at the expense of sustainability of pension provision through IORPs

Furthermore, we would caution against following a regulatory direction towards Solvency II for IORPs when the principles for insurers have yet to be finalised, and remain untested in practice.

Proportionality

There are more than 140,000 IORPs across the Member States, with Ireland having more than 80,000 IORPs and the United Kingdom more than 55,000, most of which have a small number of members/participants. The application of proportionality in operating risk-based principles is therefore of critical importance. It is also important that the measure of what is 'proportionate' should recognise the scale and resources available to IORPs of various sizes.

A further point in relation to proportionality is the extent to which precise harmonisation of solvency requirements is practical or achievable, taking into account the huge variety of pension promises in IORPs across Member States. Such promises have developed in the context of the current and past social policy of each Member State. If such differences are to be recognised in a new solvency regime, then it seems unlikely that an objective of close comparability in the detail can be appropriate. That is not to say that consistency of approach across the EU is not desirable, but that a proportionate approach is needed to reflect fundamental differences in pension provision in different Members States.

	Robust, quantified impact assessments As has long been called for and acknowledged by EIOPA in the consultation document, full and detailed impact assessments - both qualitative and quantitative - are essential. It is also vital that the macro-economic effect on markets, employing entities, growth and jobs in the EU is assessed, in addition to a specific analysis of the benefits to members and the associated costs of implementing and operating the new Directive. Underpinning an impact assessment, we consider it would be helpful for the Commission to define how it will measure the success of the IORP Directive review. In addition to a full macro-economic analysis, given the complexities of the issues under consideration and the diversity of pillar 2 provision across Member States, we suggest that there are at least two separate strands of the proposals that should be separately reviewed. • The first relates to those matters directly affecting cross-border provision; the definition of cross-border activity and the specification of what does or does not constitute prudential regulation. In doing so, we urge the Commission and EIOPA to obtain data from existing cross-border arrangements to assess what financial and other benefits have been obtained from carrying out cross-border activity compared with operating separate 'local' plans. • The second is the risk-based supervisory regime. In fact, it would be preferable to sub-divide the quantitative impact assessments to show separately an analysis of implementing (i) the capital requirement proposals (pillar I of Solvency II Directive) and (ii) the qualitative supervision and reporting requirements (pillars II and III). In assessing the potential benefits of a proliferation of cross-border IORPs, we consider that the starting point should be to obtain evidence from those IORPs that have become cross-border since the first IORP Directive to establish what cost savings or other benefits have been delivered.	
1.	**CfA 1 Scope of the IORP Directive** **Do stakeholders agree with the analysis of the options (including the positive and negative impacts)**	

	as laid out in this advice? Are there any other impacts that should be considered? We believe that if the Commission wishes to review the scope of the existing Directive, with the aims of harmonising the supervision of pillar 2 provision and enabling greater comparability across the EU, then that review should also address whether the current exemptions remain valid. This comment also applies to questions 2 to 4	
2.	**Are there any other options that should be considered? Please provide details including where possible in respect of impact.** If the objectives of the IORP Directive review include ensuring a level playing field between insurance companies and IORPs and greater harmonisation of the supervision of IORPs across the EU exemptions should in our view be granted only on the grounds of proportionality or where there is an economic case for doing so.	
3.	**Which option is preferable?** The review should either be • broader in scope, or • cover only those aspects directly related to facilitating cross-border provision - namely the 'cross-border activity' definition and the identification of the prudential regulation. This answer applies also to questions 2 and 4.	
4.	**Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?** See responses to 2 and 3 above	
5.	**CfA 2 Definition of cross border activity** **Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?** The EC's instruction as to outcome constrains EIOPA here. We agree EIOPA's analysis of the impacts, including that the possible solution (paragraph 5.3.11) could make matters more complicated. Moreover, while allowing the authorities of a third country to take measures against an IORP might reassure third country members that their interests are being protected, given that those interests would constitute the designated social and labour	

law (SLL) of the Host Member State and the prudential regulations of the Home State (i.e. not their own 'third' country) it is unclear whether this would be anything more than a presentational benefit.

We believe that the social welfare/member protection element of cross-border provision is equally important to the promotion of the free market and simplicity. Moreover, we believe that an appropriate definition of cross-border activity is linked to the issue of determining the scope of social and labour law and that both issues need much more analysis.

One particular point, that needs greater consideration, is the proposed amendment to Article 6(c) – which we consider to be unclear. Specifically, it is not clear what a "direct agreement" means; a direct agreement to do what? In addition. EIOPA will have to clarify – possibly through a new definition – what it means by "support" of an IORP. These could have important ramifications. Take, for example, the situation where a French parent of a UK-based subsidiary provides that subsidiary with a 'parental guarantee' – this is quite common in order to ameliorate the assessment of the subsidiary's 'Pension Protection Fund' Levy; would this make the arrangement a cross-border plan – even though all members of the UK subsidiary's pension are UK-based?

We work closely with those undertakings that are establishing (or have established) cross-border arrangements and we know that clarity in terms is important.

See also response to question 6.

We note that EIOPA considers that 'disputes' between supervisory authorities – see 5.3.30 – can be settled via the Budapest Protocol. This is cited as reason for the Directive not to contain "detailed procedures to settle problems between the home and the host member states". However, this presumes that issues are a purely 'supervisory' issue. It seems possible that disputes will arise in the context of

- a more fundamental question as to whether or not cross-border activity is occurring
- whether or not a particular arrangement is subject to the Directive at all (eg is it actually an occupational – second pillar – pension?) or
- whether or not the issue arises under social and labour law.

Given that these will be matters that are likely to be disputes between Member States (or at least conflict in the legal bases), the Budapest Protocol is unlikely to be of great use. We believe that EIOPA should consider – and propose a mechanism for resolution of inter-Member State conflict that does not fall under the *vires* of the Budapest Protocol.

6.	**CfA 3 Ring fencing** **What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA?** The Commission has concluded that, in the context of cross-border activity, the scope of the ring-fencing measures needs to be clarified – and seeks EIOPA's advice in this regard. The first point that we wish to make is that there appears to be no evidence that the current provisions of the Directive are in some way failing. This point does not appear to be considered either by the Commission or, by extension, EIOPA. Bearing in mind that the whole purpose of this exercise is to 'review' the existing Directive, we find it odd not to do so. Bearing in mind that facilitating cross-border activity, any measures that permit, or worse, require Member States to ring-fence assets and liabilities in relation to "their" nationals in a pension fund/scheme established in another Member State (the 'home' State) are likely to act as a barrier to cross-border provision. It potentially inhibits the pooling of those assets and liabilities and consequently reduces the 'scale economies' sought by those (comparatively few) sponsoring undertakings that wish to consider cross-border activity. This raises another issue. The notion of ring-fencing is inextricably bound up with the definition of cross-border activity. As recognised in 5.3.26 – 5.3.28, a definition of such activity based on the sponsor being located in one Member State and the IORP in another gives rise to the possibility (probability) that members/participants of the IORP will in practice be citizens of a third Member State. In such circumstances the supervisory authorities of the 'third' state would have no powers in relation to its citizens. In general we believe that the provisions in the existing Directive are adequate to allow Member States to impose ring fencing measures if needed. This seems more in line with the notion of the application of 'risk-based' supervision, with supervisors being able to decide whether action is required.	
7.	**How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing?** Please see our response to question 6. To date there is no evidence that the existing arrangements are inadequate. As we have been for some three years going through a period of unprecedented economic uncertainty and 'stress', it might be thought that if this were ever to arise as an issue it would have arisen by now.	
8.	**What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible?**	

	Please see our response to question 6. Any such obligation would ensure that very few (if any) new cases of cross-border activity would occur. This would, once more, appear to frustrate one of the two key objectives in reviewing the Directive.	
9.	**What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes, why**? This should be a matter for individual Member States to determine in the context of their national pension systems.	
10.	**CfA 4 Prudential regulation and social and labour law** **Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2?** Yes we agree EIOPA's broad analysis. However, the proposal to define prudential regulation is likely to have an indirect limitation on Member States' competence over Social and Labour Law (SLL). We wonder whether Member States might have underestimated or not fully considered this effect. If, as is acknowledged, Member States choose to determine certain 'prudential matters' as SLL, the change envisaged will have been futile and may lead to greater confusion than exists currently. We do not believe that the options considered would be of sufficient benefit to make them worthwhile and consider that instead, despite the inherent difficulties, endeavours should be made to define SLL. To achieve this, we would support an approach such as that identified in the University of Leuven's 2006 paper "The development of a legal matrix on the meaning of "national social and labour legislation" in directive 2003/41/EC with regard to five member states". Within this paper, the author suggests (paragraph 482) an "Objective approach", defining this as follows **"The** objective approach looks at common grounds for the notion of "social and labour law" with respect to occupational pensions. In the objective approach there is a combination of: • developed national matrices filled in by the Member States using the same criteria; • a common ground of six pillars on the basis of which it is possible to analyse the different national matrices.	

	This combination allows a comparative analysis of the notion "social and labour law" that is separate from the national qualification in the subjective approach. Ultimately the development of a common social policy for occupational pensions can be envisaged in this way."	
11.	**How would you assess the impact of option 2?** It is impossible for us to comment meaningfully in the absence of any solid proposal from EIOPA as to what the new 'article' in the Directive might look like. It will, therefore, be essential for the Commission to consult on any proposed new wording in order that appropriate analysis of the proposal can be made. If the Commission does not, there is a significant risk that potential problems will not be identified during the co-decision process. Again, as mentioned in earlier responses, such 'unforeseen' problems are likely to further frustrate the development of cross-border arrangements.	
12	**Chapter 8 – Quantitative requirements** **What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?** The holistic balance sheet has some appeal. We welcome the pictorial representation that illustrates the various risk mitigating measures that apply in the many and varied pension systems across the Member States. Our concerns are not with the holistic balance sheet concept, which is a helpful tool, but with the following key questions: 1) What capital should IORPs be required hold (ie in physical investments or other committed assets)? 2) What additional backing reserves (such as the Solvency Capital Requirement) should IORPs be required to have available? 3) What rules should apply in relation to the capital-backing and reserving requirements? Such rules would, for example, include the types of assets that are eligible to cover each requirement and the implications of not being fully-funded or fully-reserved. If 'employer covenant' and other security mechanisms are to be considered as backing capital or reserves, which we would generally support, the main problem will be trying to place a capital value on some of those measures.	

	Quantifying the employer covenant is recognised to be a significant challenge. That is not to say that it cannot be done, but achieving consistency across many different undertakings might well lead to a perceived need for a formulaic approach. Whilst this is likely to have the attraction of (relative) simplicity, we would question whether a single value placed on employer covenant can be determined in an equitable way across all sponsor organisations. It would create an artificial incentive to 'manage' the formula in order to improve a sponsor's covenant value. Expressing employer covenant as a single value could also have unforeseen and undesirable consequences if it became known to other parties, such as corporate analysts, credit agencies, investors and lenders. However, the 'holistic balance sheet' might well be helpful as a qualitative tool to explain to members of pension funds the degree to which their pension benefits are 'secure'. Holistic assessments including employer covenant are a key component of the current UK regulatory regime. However, this is on a largely qualitative basis, with a judgement made regarding the adequacy of the employer covenant to support both the shortfall in assets relative to technical provisions and the risks inherent in the IORP's investment and funding strategy. These qualitative judgements are subject to detailed scrutiny by the national regulator. Whilst there may be grounds for increasing the level of supervisory involvement in such assessments, in our view it is unlikely to be feasible or appropriate to focus on a single value for employer covenant determined in a formulaic way. Rather, it might remain more appropriate to quantify those elements that are readily quantifiable and to leave any 'shortfall' between the assessed liabilities and the available assets to be met by the employer covenant, subject to oversight by national regulators. To this end, we conclude that further research is needed, although we doubt that a single methodology will be appropriate. We also wonder what the consequences will be if there is a shortfall in the holistic balance sheet, or if the value of the employer covenant were to fall. UK IORPs do not have access to additional sources of capital outside of the employer covenant, so their opportunities to restore full funding would be dependent on increasing the value of the employer covenant. If underfunding of the holistic balance sheet triggers new restrictions on the sponsor's business, such as increasing the priority of the IORP relative to the sponsor's other creditors or restricting its use of assets, our view is that this would be extremely detrimental to sponsors. It would be likely to reduce the sponsor's ability to raise new capital or borrowings, and in turn increase the possibility of the demise of the sponsor, leading to (a) no improvement in the security of pension provision, and (b) loss of jobs – not only of those employees who are 'active' participants in the pension fund but many others too (for whom the 'defined benefit' arrangement is not and was not available. In summary, we support the principle underlying the holistic balance sheet, and in particular, that employer covenant should be recognised in an IORP's capital and reserving requirements. However, we believe that a	

	flexible approach is needed to the quantification of employer covenant, in order to avoid undesirable outcomes and to encompass the many different circumstances of sponsoring organisations within an individual Member State and across the EU Member States as a whole. An attraction of the holistic balance sheet is its potential for application by both employer-sponsored and Regulatory Own Funds IORPs. However, differentiation between these two forms will remain necessary given that the relationship of the IORP to the sponsoring undertaking is so different – as are the security mechanisms in the jurisdictions in which the different types of IORP operate.	
13	**CfA 5 Valuation of assets, liabilities and technical provisions** **Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?** Yes, where possible, financial assets should be valued on a market-consistent basis. Some assets, such as subordinated loans and certain insurance policies, however, may not have a liquid market and here the managers/trustees of the IORP should have the ability (taking due account of the advice of their advisers) to adopt a valuation basis that they consider appropriate, subject to the oversight of the national regulator.	
14	**What is the stakeholders' view on the two options regarding the starting principle for valuing liabilities? Do stakeholders agree that such a principle for IORPs should contain no reference to transfer value?** Option 1 is to make no changes to the existing IORP directive. Technical provisions would then be calculated in a "prudent, reliable and objective" but not necessarily "market-consistent" manner. Option 2 would be to require technical provisions to be determined on a "market-consistent" basis. Paragraph 9.3.9 of the Consultation expands on the possible meaning of "market-consistent", referring to the use of risk-free replicating assets, as far as possible. In our view, it is not obvious that option 1 is inappropriate. Although there are different interpretations of 'prudent', this is a matter that could be covered by additional provisions and can be monitored appropriately by the supervisory authorities in each Member State. With such safeguards in place, we do not believe it is likely that different interpretations of prudence will lead to regulatory arbitrage. There has been no notable regulatory arbitrage in the past because pension provision is about far more than just the 'prudence' used in setting technical provisions. Option 2 might be regarded as a reasonable approach if pension promises were of a contractual nature similar to insurance liabilities. However, this is not the case. Pension promises reflect current and past social policies, and have different characteristics both between Member States and within individual Member States. How could	

	such differences be reflected in a market-consistent valuation approach? In order to do so, there would need to be flexibility to adjust the market-consistent value of technical provisions to recognise the different nature of pension promises. This would introduce a similar scope for differing interpretations as already exists in the current IORP regime. Perhaps a greater issue is the focus on risk-free assets that option 2 implies. Events in financial markets during the last few years have demonstrated that no assets are truly risk-free. However, attempting to define technical provisions by reference to available yields on particular assets will drive market behaviour. This is particularly the case for IORPs, many of which are seeking to reduce risks as their liabilities mature. We believe there is already evidence of distortion in government bond markets, and for other low-risk assets such as swaps, which means that a standard based on market-consistency will be volatile and prone to stresses that require regulatory intervention to resolve. A market-consistency requirement for IORPs based on risk-free assets would also reinforce pro-cyclical behaviour in markets. These issues would need serious consideration if option 2 were to be considered further. It is worth observing that there is an element of market-consistency in the current UK regime, because assets must be taken at fair value and technical provisions must be valued in a manner that is consistent with the fair valuation of assets. However, market-consistency does not mean risk-free assets are the only reference point for determining technical provisions – prudent views of returns from other asset classes can be taken into account. On the particular question about the reference in article 76(2) to the 'value of the technical provisions corresponding to the amount that would have to be paid to a third party to take on those liabilities' – the 'risk margin' or transfer cost, we agree with EIOPA's conclusion that the new IORP Directive should contain **no** reference to this as the basis for calculating technical provisions.	
15	**Do stakeholders agree that the own credit standing of IORPs should not be taken into account when valuing liabilities?** In the UK, all IORPs are sponsor-backed and do not have an own-credit standing. However, on the basis that it is the nature of the promise between the IORP and the member that is relevant when valuing liabilities, rather than the strength of the IORP, we agree that the own credit standing should not be taken into account.	
16	**What is the stakeholders' view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?** We agree with EIOPA's conclusion that introducing such a requirement would **not** be appropriate, due to the very different objectives of accounting and funding standards. In particular, the degree of prudence in funding	

	valuations should be higher than is generally appropriate for accounting purposes.	
17	**Do stakeholders agree with the EIOPA view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive? What is the stakeholders' view on the two proposed options regarding Article 76(3)?** We have no concerns with Article 76(1) being applied to IORPs. Article 76(4) is appropriate for IORPs in principle. The "prudent" requirement is consistent with the current IORP Directive, but if a market-consistent approach were adopted for valuing liabilities of IORPs, EIOPA notes that the starting point will be a best estimate. We do not consider that a valuation of liabilities using risk-free discount rates represents a best estimate, even if there is no observable margin in the liability cash flows. Hence a market-consistent approach is not necessarily inconsistent with the "prudent" requirement. However, we would be comfortable with the removal of the reference to "prudent" in Article 76(4) for IORPs. Article 76(5): issues relating to Articles 77-82 and 86 are covered in later questions. Article 76(3): we have concerns that "make use of…information provided by the financial markets" might be open to differing interpretations. We do not think that this requirement is intended to mean that technical provisions should necessarily adopt market-based assumptions in all situations, particularly if option 1 is adopted for the starting principle for valuing liabilities (see question 14), so changing the text to "have regard to…information provided by the financial markets" would address our concern. In our view, option 1 is the preferred approach in relation to Article 76(3). We do not see option 1 as precluding a market-consistent approach to valuing liabilities, if that is what is desired. Rather, option 1 would facilitate appropriate adjustments to financial market information where such information is considered to be distorted (such as in times of extreme market stress).	
18	**What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?** Option 1 is to include an explicit margin for prudence in technical provisions, otherwise determined in accordance with the current IORP directive. Option 2 is to include an explicit risk margin in technical provisions determined on Solvency II principles, thereby effectively providing for the cost of transferring the liabilities to another institution. Option 3 would include no risk margin in technical provisions, so any such margin would therefore need to be covered by capital requirements.	

	EIOPA rightly points out that there is a connection between this question and the way in which liabilities should be valued (see question 14). Option 1 is valid if no changes are made to the current IORP approach to valuing liabilities, whereas options 2/3 are valid if a market-consistent approach is adopted to valuing liabilities. We believe that the main question here is about option 1 as opposed to option 2/3, so this is in essence the same point as how liabilities should be valued. As mentioned in our response to question 14, there are considerable issues in introducing a requirement for market-consistent valuation of liabilities, and broad consistency could be achieved even if the current IORP directive provisions were retained. Option 2 would lead to a very substantial increase in technical provisions (including the risk margin) for most UK IORPs. In broad terms, we estimate that the amount of underfunding in UK defined benefit IORPs on this basis at the present time, excluding any solvency capital requirement, could be around £700 to £1,000 billion. Whilst this is not in itself an argument against introducing it, it does at least suggest that the implementation of such a change would need to be over a much extended period. Sufficient flexibility would also need to be available to ensure that outcomes were in the best interests of members of IORPs (and the wider workforce of the sponsor), and that the needs and requirements of the Pension Protection Fund were properly considered. UK IORPs do not have the legal option to reduce members' benefits in the event of serious underfunding (other than on termination of the IORP following the insolvency of the sponsor), nor do they the power to raise capital independently of the sponsor. Any increase in the funding requirement placed on IORPs therefore directly impacts on the covenant of the sponsoring employer. Option 3 has the appeal of having a lower impact on IORPs' funding requirements, but seems to have little objective merit and does not sit well with UK Trust Law. In our opinion, it would be appropriate to set a long-term funding objective for IORPs based on a prudent assessment of the value of the liabilities, as is currently the case under the existing IORP directive. Option 3 would exclude any margin for prudence in the liability cash flows, but require these best-estimate cash flows to be discounted at a risk-free rate (ie a very prudent discount rate). We would question whether this would represent a consistent approach.	
19	**Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions?** We agree with the proposed conditions concerning when future accruals should be taken into account in technical provisions. However, careful definition will be needed to ensure that only those cases where future accruals meet these conditions are captured by the new requirements. In the UK, future contributions are often agreed and fixed for a period but subject to review at future actuarial valuations. In addition, the sponsor remains responsible for funding accrued obligations to the extent that these are not covered by contributions made by IORP members. Based on our experience, we would expect it to be a rare exception for any UK IORP	

	to be required to include future accruals in its technical provisions.	
20	**Do stakeholders agree that the best estimate of IORPs should be calculated gross without deduction of amount recoverable from reinsurance contracts and special purpose vehicles?** Yes. The gross liabilities should be included in technical provisions, with amounts recoverable from (re)insurance contracts and special purpose vehicles treated as assets.	
21	**What is the stakeholders' view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative impacts)? [options offered were no. 2 and no. 3]** In our view, option 3 (two discount rates/levels of technical provisions) represents the more practical approach, and would have significantly less-detrimental impact on IORP sponsors and their workforces. Level B technical provisions could continue to be determined in a way that is broadly similar to the approach under the current IORP directive, although as mentioned previously, some greater commonality of approach can probably be achieved even under this regime. Subject to any changes made to improve commonality, we believe that flexibility should be available for national regulators to supervise the basis for Level B technical provisions. Option 3 would considerably reduce incentives for pro-cyclical investment behaviour, which would be a particular concern with option 2. We are concerned about the potential volatility of Level A technical provisions, and the impact this might have on IORP sponsors. Whether this creates a problem in practice will depend on the rules surrounding use of employer covenant as an asset in the holistic balance sheet. It will also depend on whether harmonisation of funding levels towards Level A technical provisions is (or becomes) a requirement, and the pace and flexibility of this harmonisation. At present, the UK regulatory regime requires disclosure of approximate buy-out solvency (a possible proxy for Level A technical provisions – inclusive of the 'risk margin'), assuming that the IORP were to terminate without any further recovery from the sponsor. Such solvency levels are very volatile, but this does not have a major impact for most IORPs because it is only a disclosure obligation. Any change to make this a funding requirement, or to impose restrictions on sponsor's freedom to act where employer covenant is included as an asset in the holistic balance sheet could, in our opinion, have a material and detrimental impact on sponsors' businesses. Any such change would therefore require a flexible and extended period of implementation, and include the possibility of very long recovery periods.	
22	**Do stakeholders agree that expenses incurred by the IORP in servicing accrued pension right should**	

	be taken into account in technical provisions as introduced by Article 78 of Solvency II? If a two-tier system of technical provisions is introduced, as discussed in question 21, then it would be consistent to include expected expenses to be incurred in service accrued pension rights in Level A technical provisions. However, we do not believe it is necessary to prescribe a particular treatment of expenses in determining Level B technical provisions.	
23	**Do the stakeholders agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II? Do stakeholders find that discretionary benefits should be included in the best estimate of technical provisions? Is the Solvency II article on surplus funds useful for IORPs in this respect?** We believe that true discretionary benefits should be excluded from technical provisions. If they were to be included in Level A technical provisions, the inevitable conclusion is that sponsors would cease providing them (and in UK terms, the decision generally rests with sponsors, or at least requires the sponsor's agreement). In general, we would support the inclusion of conditional benefits in technical provisions (which is not to say that they should be dealt with in the same way as unconditional benefits). This is because to exclude them would probably increase the likelihood of the circumstances arising in which the conditional benefits could not be delivered. However, we believe it is important to understand fully the types of conditional benefit that are provided by IORPs in different Member States before deciding whether or not a requirement should be introduced to include such benefits in technical provisions. This would also allow the definition of conditional benefits to be refined so that no true discretionary benefits are inadvertently caught. We imagine that sponsors would be very concerned about the risk that a benefit they regarded as fully discretionary might subsequently fall to be treated as conditional. To the extent that it is necessary to distinguish between conditional and unconditional benefits, our view is that benefits that an IORP would no longer be obliged to provide if an individual's membership terminated are conditional benefits.	
24	**Do stakeholders agree with EIOPA's view of introducing Article 79 of Solvency II with appropriate amendments into a revised IORP Directive regarding allowances for financial guarantees and contractual options when establishing technical provisions?** Yes, but there may be a need to distinguish contractual options from conditional or discretionary ones. For example, most UK IORPs contain an option for members to take their pension early, subject to a reduction, but	

	the option is subject to the agreement of the IORP trustees and/or the sponsor. The terms for reducing the pension are also often set by the trustees and/or the sponsor without any obligation to maintain the current terms. If such an option was commonly offered and the terms were consistent over an extended period, it might be regarded as a conditional option. However, we envisage considerable difficulty in establishing whether this is the case without detailed knowledge of the experience of each IORP. In our view, such matters must be left to national regulators to supervise.	
25	**Do stakeholders agree that it would be useful to introduce Article 80 of Solvency II with appropriate amendments into a revised IORP Directive regarding appropriate segmentation of risk groups when calculating technical provisions?** This seems a logical requirement in the context of insurance companies that transact a range of fundamentally different types of business. However, given the relatively more homogeneous nature of their liabilities, we doubt that it would achieve any particular benefit for IORPs. If such a requirement were to be introduced, then it should be made clear that IORPs themselves would be responsible for determining the appropriate segmentation based on their own circumstances. We would also be concerned to ensure that IORPs are not required to disclose their segmentation, other than to the supervisory authorities, as this could lead to breach of confidentiality or data protection requirements in some situations. At present, UK IORPs already break down their liabilities into those relating to current pensioners (beneficiaries), in-service members and preserved members (former members who retain a pension right payable when they reach retirement age). (Please note that the nomenclature for members here relates to the definitions in UK pensions legislation.) IORPs also break down their liabilities into further groups if required in order to set appropriate assumptions for each group where their characteristics are sufficiently different. This is part of fundamental actuarial practice	
26	**What is the view of stakeholders on the two options regarding recoverables form reinsurance contracts and special purpose vehicles as introduced by Article 81 of Solvency II?** Given the relatively limited use of such vehicles by UK IORPs, we believe that it would not be proportionate to introduce further detailed requirements regarding their valuation. As they are assets of the IORP, they would be subject to the requirement to value them on a market-consistent basis. A market-consistent basis would take into account the nature and the timing of the expected recoveries from such vehicles, and associated risks such as counter-party default risk. We therefore prefer option 1.	

27	**Do stakeholders agree that it would be useful to introduce Article 82 of Solvency II with appropriate amendments into a revised IORP Directive regarding the availability of data and the use of approximations in the calculation of technical provisions?** We agree with the principles of Article 82, and believe these principles are currently being followed by UK IORPs.	
28	**Do stakeholders believe that it would be useful to introduce Article 83 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for assumptions to calculate technical provisions to be regularly compared against experience and adjustments made when appropriate?** We agree this is reasonable, provided that proportionality is enshrined for IORPs, so that the processes required of IORPs are consistent with the benefit likely to be obtained by carrying them out. The relevance of comparing experience with assumptions for many IORPs is limited by the modest amount of experience data they have available.	
29	**Do stakeholders agree that it would be useful to introduce Article 84 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions?** Yes – this is effectively already a requirement of the UK regime.	
30	**Do stakeholders agree that it would be useful to introduce Article 85 of Solvency II with appropriate amendments into a revised IORP Directive regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law?** We agree that it is reasonable for national regulators to have this power where an IORP's technical provisions do not meet the requirements of the Directive. However, in some cases, it will be unclear whether the technical provisions meet these requirements, and so an element of subjective judgement is needed. In these cases, there should be procedures to ensure that IORPs have a right of appeal against decisions of the supervisory authority.	
31	**Do stakeholders agree 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?** A key difference between insurers and IORPs is the significantly greater number of IORPs, and their very much smaller average size. There is therefore an imperative for proportionality to be embedded in any new regime for	

	IORPs. A further key difference is the range of types of pension promise provided by IORPs, reflecting past social and labour law. Such differences need to be reflected equitably in the application of any new regime. Unlike insurers, UK IORPs are (as mentioned earlier – see responses to questions 12 and 18) also entirely dependent on their sponsors as a source of capital. The impact of any new regime on IORPs is therefore inextricably linked with the impact on their sponsors. It is therefore important to ensure that changes are implemented in an appropriate and flexible way that improves outcomes for members and minimises reliance on the Pension Protection Fund. Taking all these points into account, our view is that most implementing measures should be in the hands of national regulators, who can apply detailed knowledge of the circumstances of IORPs. If it is necessary to adopt implementing measures at EU level, these should be the highest-level principles only, and subject to consultation and impact assessment before adoption. Furthermore, implementing measures for IORPs should not be considered until sufficient experience has been obtained from implementing the corresponding measures for insurance companies.	
32	**Do stakeholders agree that individual Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive?** If the intention is to harmonise the calculation of technical provisions to a degree that additional rules at a national level are not necessary, then it would clearly be inappropriate to permit Member States to adopt additional rules. However, our responses to earlier questions have emphasised the need for flexibility at a national level to ensure the best outcomes for IORP members. We believe that this is paramount. Interpretation at a national level might also be appropriate and relevant to reflect the different nature of pension promises in some Member States. We believe that the Directive should permit this flexibility at national level. It is not saying that Member States should be able to adopt different rules for technical provisions.	
33	**What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?** We agree with EIOPA's analysis regarding sponsor support. If a fully harmonised approach to the calculation of technical provisions is the aim, then it would be logical to show the value of sponsor support as an asset in the	

	holistic balance sheet, rather than as an adjustment to the liabilities. In this case, we agree with EIOPA's conclusion that option 1 is the most appropriate, ie so that the existence of sponsor support is also reflected in the solvency capital requirements where these are required. However, as mentioned before, we do have significant concerns about whether employer covenant can be adequately and fairly represented by a single value. In the UK, assessment of employer covenant strength has been a feature of the regulatory regime for several years, and much experience has been gained. A sizeable professional service industry now exists to support formal analysis of employer covenant. Irrespective of how objective such assessments are, they rarely result in a single value being place on the covenant, or even include such a value. Whilst further work is required in this area, a practical approach might, therefore, be to assess the value of sponsor covenant in broad bands, with a judgement then being made as the extent to which the covenant can cover the difference between technical provisions and the value of physical assets held, contingent assets and (if necessary) solvency capital requirements. This would be a modification of the holistic balance sheet approach, in that the balance sheet would not be shown as balancing. Instead, it could lead to a 'risk rating' depending on the extent to which any shortfall in the balance sheet was deemed to be covered by the value of employer covenant, with appropriate supervisory measures depending on the risk rating.	
34	**CfA 6 Security mechanisms** **Do the stakeholders agree that Articles 87-99 of Solvency II on own funds should be applied to IORPs? What amendments, other than the ones suggested by EIOPA, should be made?** We believe that all UK IORPS are of the type where the sponsoring undertaking bears the risks (ie not "regulatory own funds"). Whether or not it is appropriate to require sponsor-backed IORPs to be supported by own funds, in addition to their technical provisions, depends on the level of technical provisions they are required to hold. If IORPs are expected to hold technical provisions, including a risk margin, at a level that broadly reflects the cost of transferring their liabilities to a third party (generally an insurer), then we do not believe it would be appropriate to require additional own funds. This is because sponsor-backed IORPs, unlike insurers, are not in the business of taking risks to make long-term profits. If a sponsor-backed IORP were able to transfer its liabilities to a third party, with only a few limited exceptions, we would expect it to do so. If IORPs were to be required to have own funds, then significant changes to Articles 87-99 would be needed in	

	order to address the situation of sponsor-backed IORPs. The only source of own funds generally available to UK IORPs is employer covenant. IORPs do not have direct control over the value of employer covenant and therefore – as mentioned at 12, 18 and 31 above - cannot themselves raise additional own funds.	
35	**Do stakeholders agree that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive?** Subordinated loans are not in use by UK IORPs. However, if it were accepted that IORPs should hold own funds, and subordinated loans rank behind the interests of members and beneficiaries, then it would seem appropriate for subordinated loans to be allowed as own funds.	
36	**What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?** The overall level of capital required to back a pension promise (ie the level of security) should reflect the nature of the promise itself. In some Member States, conditional benefits are a feature, which can be reduced if financial conditions are unfavourable, or where the employer's financial commitment is subject to a limit. In the UK, discretionary benefits have become less common over time as legislation has imposed additional commitments on IORPs. However, due to the social nature of pension provision, and the employee-employer relationship, we believe that it is recognised that the nature of the pension 'promise' is not as 'hard' as a contractual guarantee. In particular, employers have given pension promises in the past in the knowledge that they were not required to fund such promises at a level that guaranteed those promises with a high degree of certainty. To impose a high probability now therefore would be retroactive, and would imply a reinterpretation of pension agreements made in the past, perhaps many years ago. One approach would therefore be to apply a consistent level of probability only to future pension promises made after a specified date. This would ensure that the security of the promise can be properly taken into account by employers and employees in their pension planning. Whilst we can see the rationale for a consistent level of security for pension promises, we do not believe that consistent means 'the same'. In particular, a flexible approach would be needed to reflect the different nature of pension promises in Member States. Furthermore, security in different Member States is provided in part by a range of mechanisms (such as the UK's Pension Protection Fund and various IORP-specific contingent funding arrangements). Such mechanisms are in many cases hard to place a value on. A wide-ranging discretion would need to be available to national regulators to decide how such mechanisms should be taken into account in	

	assessing security. If a specific probability were to be prescribed for IORPs, then clarity would be needed as to what this probability represents in order to avoid misunderstanding by other parties, including IORP members and beneficiaries. In the consultation document, probability is discussed in the context of the confidence level used to determine the solvency capital requirement. However, a more meaningful interpretation of solvency would be the probability that the IORP is able to pay members' benefits over the long-term. These two definitions are clearly very different.	
37	**Do the stakeholders agree that the confidence level should apply to a one-year time horizon?** We see this as a question of practicality. IF a risk-based solvency capital requirement is considered to be appropriate for IORPs, we don't have any strong views as to whether the confidence level should be measured over a one-year time horizon, or over a longer period (but which would still be relatively short compared to the duration of the IORP's liabilities). We would, however, reiterate the point from our response to question 36 that an x% confidence level does not mean that that is the probability of members' benefits ultimately being paid by the IORP.	
38	**What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?** In our response to this question, reference to IORPs means UK-based, sponsor-backed IORPs. We believe there is a strong argument that it would not be proportionate to introduce an SCR requirement for IORPs. The Solvency II rules for insurers are based on the premise that the institution should hold additional capital to cover a 1:200 extreme event over a 12 month period. If the SCR were breached, the institution would need to take corrective action over a short period, under regulatory scrutiny. Such actions could include raising additional capital, or closure to new business. For IORPs, the position is different. Firstly, most IORPs are significantly underfunded relative to a market-consistent measure of technical provisions. They are therefore relying on employer covenant to bridge the shortfall. Applying a notional additional SCR onto the shortfall, and therefore increasing the reliance on covenant, does not obviously improve outcomes. Secondly, IORPs cannot quickly change their capital base (largely the employer covenant) to reflect changes in the SCR. Any application of a risk-capital approach to IORPs should therefore be proportionate to the range of actions that are possible.	

	Thirdly, IORPs should not be required to hold more assets than the cost of buying-out their liabilities (ie transferring the liabilities to an insurer). If an IORP reaches the position where it is fully funded relative to buy-out cost, we would expect it to do so in most cases. This is a key difference between IORPs and insurance companies, whose raison-d'etre is to continue in business taking risks to make a profit. Even very large IORPs that might find it difficult to buy out would probably de-risk as fully as possible in this circumstance. There is perhaps an argument for requiring such IORPs to hold an SCR (at a reduced level) against remaining unhedgeable risks, but given the relatively small number of IORPs in this position, we suggest that it might be a matter left for national regulators in the light of the strength of the employer covenant. In most cases, it is likely to be IORPs with stronger sponsor covenants who do **not** buy out, and covenant would be a source of backing capital against unhedgeable risks. Fourthly, the Pension Protection Fund (PPF) 'insures' against default for a significant proportion of IORPs' liabilities. Arguably, requiring additional risk capital for such liabilities is doubling the level of backing capital needed. In other words, IORPs would then have to pay for the cost of the insurance, in the form of PPF levies, and the cost of the capital for the SCR. Fifth, the calculation and reporting of the SCR is an onerous part of the Solvency II regime for insurers. For many IORPs that are a fraction of the size of the average insurer, with limited governance budgets, it seems disproportionate to require the calculation of a risk-based SCR to a specified level of probability, particularly given the relatively limited range of actions that can follow in the event of under-capitalisation. For all of the above reasons, we are of the view that the SCR is not appropriate for IORPs. The focus of the regime should be to set an appropriately-prudent long-term technical provisions target, with a flexible (but rigorous) approach to reaching the target implemented by national regulators.	
39	**Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?** If it is appropriate to assess an SCR for IORPs (see question 38), then we believe that a three-yearly assessment would be proportionate, taking into account both the capacity of resources and the limited range of actions available to IORPs.	
40	**What is the stakeholders' view on imposing a minimum capital requirement (MCR) upon IORPs? What adjustments to the Solvency II rules are needed regarding the structure and frequency of the calculation?** This is linked to the question about whether it is appropriate to impose an SCR on IORPs (see question 38). If it were accepted that the SCR should **not** be required for IORPs, then the MCR would also be inappropriate. That is not to say that a minimum threshold for regulatory action should not be set, but in our view, that minimum	

	threshold should be set based on the outcomes it is expected to achieve. The issue of regulatory intervention where capital requirements are breached needs very careful consideration for sponsor-backed IORPs. Such regulatory intervention is almost certain to have market consequences for the sponsors. The regulatory regime should give sufficient discretion to national regulators so that intervention takes account of the consequences for each sponsor, and maximises the potential benefit for IORP members.	
41	**What is the stakeholders' view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?** The UK Pension Protection Fund (PPF) provides 'compensation' for a significant and specified part of the benefits provided by defined benefit IORPs. It would therefore seem reasonable to include a value for this cover as an asset in the holistic balance sheet. This would be similar to the treatment of reinsurance recoveries for an insurer. However, there are important challenges with recognising the cover provided by the PPF as an asset. It would need to be considered how the asset would be valued. Logically, the value of the asset to be recognised would be related to the cover it provides for the IORP, ie the level of underfunding of the IORP relative to the value of liabilities taken into account by the PPF. However, this would create a moral hazard risk by permitting an asset to be taken into account that is larger for the IORPs that are most underfunded. In our view, therefore, it would be difficult to justify reducing IORPs' capital requirements because of cover provided by the PPF, as that would increase the risks to the PPF (and hence the cost of the PPF for remaining IORPs, which is met by way of levies). One of the arguments we put forward in our response to question 38 for not prescribing an SCR for IORPs is the existence of the PPF. If it were accepted that the SCR is not appropriate for IORPs, then it could be argued that the existence of the PPF would already have been implicitly allowed for in the holistic balance sheet. An explicit allowance for the PPF would not therefore be needed.	
42	**Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?** No, we do not agree that capital requirements for operational risk should be applied to 'pure' DC schemes. Contract-based (third pillar) DC arrangements to which the sponsor contributes (or provides a payroll deduction facility) also carry operational risk to the sponsor. In this regard, it is important to have a level playing field between DC IORPs and contract-based arrangements, otherwise employers will simply abandon IORPs and move	

	to third pillar contract-based provision. We believe that this would be to the disadvantage of members and employers, because DC IORPs generally enjoy a higher level of governance under UK trust law. Operational risk for both DC IORPs and contract-based arrangements is generally provided by the employer covenant. Good governance practices minimise operational risk to sponsors.	
43	**What is the stakeholders' view on the analysis regarding the duties of IORPs and the powers of supervisors in the case of deteriorating financial conditions as introduced by Article 136 and 141 of Solvency II?** In principle, the provisions of Articles 136 and 141 appear reasonable for IORPs. The key is to ensure that they are applied in a proportionate manner. There may be grounds for more regular reporting to the national regulator in the event of deteriorating financial conditions. For example, it would be straightforward to make annual actuarial reports available. However, we would be concerned if there were a proposal to require the provision of detailed information to the regulator on a more-frequent basis, given the limited capacity for IORPs to take short-term action in response and constraints on resources. There seems to be scope for significant increase in costs for IORPs in calculating and reporting their financial position during very volatile market conditions, and for national regulators in deciding what to do with the information. Responses to deteriorating conditions usually emerge over a period of time by discussion between IORPs and their sponsors. Similarly, the powers of regulators and their application in deteriorating financial conditions should be commensurate with the range of responses available to IORPs. The objectives of regulators should be to secure the best longer-term outcomes for members and to avoid pro-cyclical behaviours. These objectives might be best served by relaxing shorter-term regulatory requirements rather than strengthening them.	
44	**What is the stakeholders' view on the analysis regarding the submission of recovery plans and the length of recovery periods as introduced by Articles 138 and 139 of Solvency II? Should the recovery periods – with regard to the SCR and possibly the MCR – for IORPs be flexible, fixed or a combination of both? What would be the reasons – if any – to allow IORPs longer recovery periods than prescribed by Solvency II?** We agree with EIOPA that recovery plans for IORPs should be, and indeed must be, flexible. Most UK IORPs are significantly underfunded, and are already trying to rectify this over as short a period as the sponsor can reasonably afford. There is no benefit in putting a sponsor out of business by imposing too high a pension funding requirement. In most cases, the best outcome for members will be secured by ensuring that the sponsor continues in business providing covenant backing for its IORP. National regulators are best placed to	

	address the right balance between funding a deficit and protecting the sponsor's covenant. Given our previous argument that the SCR (and hence also the MCR) is not appropriate for IORPs, then the distinction between Articles 138 and 139 would not need to be made.	
45	**Do stakeholders agree that the IORP Directive should be extended with stipulations introduced by Article 137 and 140 allowing supervisors to prohibit the free disposal of assets when IORPs do not comply with the capital requirements or the rules for establishing technical provisions?** In an ongoing situation, UK IORPs are currently unable to dispose of their assets other than to pay benefits or discharge expenses properly incurred in the running of the IORP. Even in the event of termination, free disposal of assets is not permitted unless and until all benefits have been fully secured. It would need to be decided whether and in what circumstances supervisors would be permitted to restrict the payment of conditional or discretionary benefits. In our view, conditional benefits should not be restricted unless it is clear that a recovery plan cannot be put in place that has a strong chance of being successful.	
46	**Do stakeholders agree that it should be specified in the IORP Directive what constitutes a recovery plan as introduced by Article 142 of Solvency II? How should the contents differ from those of insurance companies?** We do not hold strong views as to where the requirements for a recovery plan should be set out. However, we would be concerned to avoid specifying items to be included that are not relevant for all IORPs. For example, including forecasts of income and expenditure does not in its own right seem particularly appropriate for an IORP regime focused on reaching long-term solvency. More critical matters would be the level of funding to be paid, and the main assumptions being made about future asset returns.	
47	**CfA 7 Investment rules** **Do stakeholders believe that the prudent person principle is a sufficient basis for the investment of IORPs or is additional provision needed?** Yes. Subject to the limitations referred to in this response and in our responses to questions 48 and 49, we consider that the prudent person principle is a sufficient general basis for investments by IORPs. We also consider that EIOPA's revised wording and approach outlined in option 3 seems appropriate **if** the provisions of Article 132(2) of the Solvency II Directive are to be adopted in the revised IORP Directive. We are not convinced, however, that this is necessary or desirable. One particular point is that the wording of Article 132(2) suggests that the managers of the IORP must be able to 'manage' and 'control' the risks of the particular	

	assets in which it invests. Whilst the managers of an IORP may be able to 'manage' the risks in the IORP's investment portfolio as a whole, and even to control certain aspects of these risks at an aggregate level, the risks relating to particular assets will generally be outside of their influence. We would suggest that this point be clarified in any revised provision in the IORP Directive. We support the continued specification of a quantitative limit(s) to investment in the sponsoring undertaking in particular, and the need for diversification more generally. We believe that it is appropriate to permit investment in derivatives as provided for in article 18(1)(d), particularly with the requirement that this be to "facilitate efficient portfolio management". However, we see no reason why 18(1)(d) should refer to the valuation of derivatives as being 'on a prudent basis'; all assets should be valued on a market-consistent basis. We disagree with the introduction of a specific provision to avoid geographical concentration. It is not by any means clear that geography is a particular factor leading to concentration of risk in asset portfolios generally. Other factors, such as concentration by asset type or industry, can be more significant. Furthermore, it is difficult to establish the level of concentration of risk by geography with any accuracy, due to the global nature of many investments.	
48	**Do stakeholders feel that Member States should have the option to impose limitations on investments in addition to those set out in the IORP Directive? What about host member states?** We agree with EIOPA that, in the interests of prudential oversight or protecting member interests, it may be appropriate to permit Member States to impose investment limitations, but only in relation to IORPs where the members/participants bear the investment risk. The ability for host States to impose stricter investment rules (albeit restricted to the extent to which such stricter rules would apply to its 'domestic' IORPs) on an IORP based in another (the 'home') Member State is likely to act as an obstacle to and not facilitate cross-border activity.	
49	**To what extent do stakeholders believe the investment provisions of the Directive should differ between defined benefit and defined contribution pensions?** Defined benefit regulation can be risk based with IORPs applying the framework to select assets appropriate to their liability profile. Individual members of DC arrangements will not be able to make decisions along similar lines, given their typically limited investment experience and resources. Therefore we agree that Member States should be granted the (optional) power to impose more restrictive provisions for DC arrangements. EIOPA is consulting on four possibilities in relation to multi-funds, default options and life-styling. These possibilities concern the degree	

	of permitted or required intervention at either individual Member State supervisory authority level or at the wider European level. Our view is that this should be permissive and should be determined at the individual Member State level. This is necessary in relation to, for example, lifestyling designs given the diversity between Member States in the form of benefit provision. To illustrate this, in the Netherlands all benefits must be provided in pension (lifetime income) form. In the UK it is possible to take up to 25% as a lump sum. In Belgium it is possible to take up to 100% in the form of a lump sum. In the UK, DC IORPs compete directly against contract-based (pillar 3) arrangements, which are effectively individual insurance-based arrangements to which the employer makes contributions. Subject to protecting members' interests, any regulation of DC IORPs therefore needs to be proportionate and such that a broadly level playing field exists between the two types of arrangement. This can be best achieved by providing for requirements to be set at Member State level. We welcome and agree EIOPA's conclusion that a VaR limit would not be beneficial. EIOPA states in its draft advice (at para 11.3.55) that in several jurisdictions there is no reference to technical provisions for DC IORPs. If the Commission decides that it is desirable that such reference should be made explicit it would be helpful to confirm that – for 'pure' DC IORPs, the technical provisions equate either to (i) assets or (ii) assets plus an allowance for operational risk (if that route is pursued – although, to be clear, we do not support such an additional allowance).	
50	**Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?** The overall direction of the regulation of investment strategies is towards a principles-based approach, with the 'prudent person' notion at its core. Any divergence from such a principles-based approach in favour of specific restrictions on individual asset classes appears contrary to that aim. Intervention by supervisory authorities would need to be targeted to avoid the wider Directive's aims of harmonisation becoming ineffective. Such intervention is likely, in a risk-based system, in the event of risk-based parameters being exceeded. We refer to answers in relation to the cross-border and ring-fencing questions (6 and 8 above) where we state that any restrictions permitted by 'Host' States will potentially hamper rather than facilitate cross-border provision. A balance is required between permitting restrictions to protect members' benefits and complexity. Once again, this is particularly an issue for cross-border schemes where different funds/options/defaults apply. For DC schemes the application of minimum standards for default options/lifestyle seems consistent with a risk-	

	based approach. The use of funds that comply with stated principles and are considered "safe-harbour" are important for encouraging provision. Where possible disclosure, with suitable options, rather than compulsion is considered appropriate for creating a risk-based DC system. Minimum standards may have the undesired effect of increasing homogeneity of approach, potentially creating systemic risk. It is also possible that they will restrict innovation. We note that EIOPA suggests that that it is important to distinguish between direct investment in the securities of a sponsoring undertaking and the operation of the employer covenant. We agree. It is clear that the key aspects in the Call for Advice relating to the 'pillar I', capital adequacy, requirements for IORPs have the scope to have a profound effect on IORP investment strategies. Most notably, there is likely to be a drive away from equity (and other such 'return-seeking' asset classes) in favour of government bonds and similar 'low risk' assets. Notwithstanding the geographical concentration issue, this has proven to be a significant problem and one that is likely to exacerbate not reduce the pro-cyclicality risk.	
51	**What is stakeholders' view of the current prohibition on borrowing in Article 18(2)?** In principle, we have no objection to the removal of the current prohibition on borrowing. However, our preferred stance would be to retain it and to make it clear that this does not cover subordinated loans.	
52	**CfA 8 Objectives & pro-cyclicality** **What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour?** It is important to consider how any new regime for IORPs will impact on the operation of markets and whether it offers sufficient and appropriate opportunities for solvent institutions to ride out periods of general market stress. This is particularly true in the UK where IORPs are a significant investor in all investment markets. Whilst the UK is not the only Member State with significant defined benefit liabilities (and consequently investments to meet those liabilities), it does constitute the largest – by some considerable margin. In the UK, IORPs will be systemically relevant. In principle, we support the concept of the 'symmetric adjustment' contained in Article 106 of the Solvency II Directive. (Although the section in the consultation document is raised in the context of the SCR, which we consider inappropriate for employer-backed IORPs, we feel the notion of such adjustment should apply in the wider context of setting technical provisions.) However, we are concerned about the implicit assumption that it is only equity markets that can give rise to the overshooting that requires something like an equity dampener to moderate systemic risks. It is also possible for other asset classes. In particular, price/yield movements in	

	government-backed securities used as proxies for risk-free assets is something that must be considered seriously when building rules in this area. We do not agree with EIOPA's assertion (paragraph 12.3.16) that pro-cyclical effects for IORPs can be addressed entirely by longer recovery periods. Longer recovery periods, in themselves, are likely to have a limited impact on countering pro-cyclical behaviour. What is required is the flexibility to relax some rules temporarily in order to prevent systemic realignment of assets or other rapidly implemented changes to the IORP that may have long term repercussions for IORP members. Experience suggests that it is very difficult to predict the next combination of circumstances that would require IORPs across Europe to take similar actions, and thereby create systemic risks. The better approach would therefore be to ensure that regulators are sufficiently resourced to monitor the system and empowered to make adjustments when this is deemed to be appropriate. EIOPA would need to consider the extent to which this should be carried out by each individual country's supervisory authority, which is best placed to access information about each individual country's stock market and the particular stresses on domestic IORPs. As we mention in our 'general comments' above, whilst it may have many other benefits, the existence of a tighter, more prescriptive, IORP Directive for individual regulators to implement does by its nature increase systemic risk. Governing all IORPs by the same rules makes it more likely that their actions will be more closely aligned. This close alignment of actions creates new systemic risks that are not in the current system.	
53	**CfA 9 General principles of supervision, scope & transparency & accountability** **Do stakeholders agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability should also apply to IORPs**? We believe that the supervisory authorities 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. Perhaps more importantly, 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 than other regulated entities, including insurers. What is not explained, however, is what EIOPA (and the Commission) means by 'proportionate'. We believe that it is essential that the Commission and/or EIOPA explain further how it/they consider judgements on what is or is not proportionate are made. Indeed, it seems likely to us that a 'proportionate' approach might, in practice, mean different things in different situations. In particular, it should be stated as to whether such judgements are to be made by individual supervisory authorities rather than EU-	

	wide. Transparency and accountability are also essential. Supervisory authorities should be under an explicit obligation to be consistent and even-handed when dealing with the regulated entities and transparency is a key way to achieve this. We recognise however that there is a challenge to ensure consistent treatment between potentially very diverse IORPs. Again transparency in decision making should help. As recognised by EIOPA at 14.3.7 the requirement that supervision should involve verification on a continuous basis might not be appropriate or proportionate for sponsor-backed occupational pension schemes. In our view, 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 proportionate to the range of IORPs present across Europe.	
54	**Has EIOPA identified correctly those issues – need to enhance benefit security, differences between IORP and insurance supervision, and diversity of IORPs - where there should be differences between insurers and IORPs on supervision and transparency and accountability?** Paragraphs 2.6.5 to 2.6.7 of the consultation document identify 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 social and employment legislation is applied to the IORP. This adds key aspects of 'member protection' that are not present in the insurer/policyholder relationship. Critical here is the fact that the Solvency II Directive (and the Level 2 and 3 regulation/guidance made under it) is a standalone piece of legislation that covers the supervision of insurers and, to an extent, the relationship between insurers and policyholders. Whilst IORPs are subject to supervision of their operations much of the substance of what they do is subject to separate social/employment legislation covering the negotiations between the sponsor and the membership. 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 – both parties typically participating in management boards (albeit, in the UK, the 'trustees' take on a separate, independent and non-partisan role). The importance of the difference in the 'fiduciary' roles of the management/trustee body and that of a contractual situation between policyholders and insurers should not be underestimated. As recognised in the first IORP Directive there is legal separation between the IORP and the sponsoring undertaking. In the UK and Ireland centuries of 'Trust Law' have established that the trustee body has to act in the interests of the members	

	and beneficiaries – although, in the context, the sponsoring undertaking can also be considered to be a contingent beneficiary. This is quite different from the structure of most insurance undertakings. We agree with the second and third differences outlined in paras 2.6.6 and 2.6.7. However, the differences between insurers and IORPs are not limited to these three. More importantly, there is another 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 IORPs 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	**CfA 10 General supervisory powers** **Do stakeholders agree with the recommendation that supervisory authorities should have broadly the same powers to require IORPs to conduct stress tests as it has in respect of insurers?** In principle, yes – we agree that supervisors should have powers to require IORPs to carry out stress tests. However, the scale and complexity of such tests should be appropriate to the size and resources of IORPs. Stress tests should also be capable of adaptation so that smaller IORPs are not affected disproportionately Given the above, it is essential that any provision of powers to the supervisory authorities are such that it is they who can decide whether and, if so, when and how stress tests should be undertaken.	
56	**Do stakeholders agree with reinforcing the sanctions regime for IORPs?** We are not convinced that any further reinforcement is required – at least within the existing UK regime. UK pensions legislation already includes adequate sanctions, details of which are visible to the regulated community. However, there is a need to ensure that these powers are exercised consistently and transparently. Moreover, in the context of significant changes to the solvency requirements, it would not be unreasonable that	

	this should be looked at further.	
57	**Should knowledge of the imposition of penalties be public or restricted?** The supervisory authority should be able to make public the imposition of penalties in appropriate cases. However, it should once more be borne in mind that IORPs differ from insurers – as recognised in para 15.3.11. - and the public disclosure of penalties should be reserved for the most serious of cases or should be reserved for situations where 'innovative' approaches cause regulatory concern in the event of such approaches becoming widespread.	
58	**Should host states be able to impose sanctions on IORPs without going through the home state?** As now, under article 20(1) of the Directive, 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. We have seen no evidence that the current regime is deficient and, indeed, EIOPA admits as much at 15.3.14. We disagree, therefore, with EIOPA's conclusion at 15.4.5 and 15.4.6. Moreover, we think it important that the Home state (which has supervisory/prudential responsibility) should be the first choice with regard to imposition of sanctions. Only if that state does not impose sanctions (without good reason for not doing so) should the Host state be able to impose sanctions. In such an extreme case the Home state should cease to have jurisdiction in the particular matter at issue. If the Host state is allowed a priori to impose sanctions there can never be absolute certainty as to the rules that are to be followed. In the event of dispute between the supervisory authorities of the Home and Host states, the Budapest Protocol provides a route for resolution.	
59	**CfA 11 Supervisory review processes & capital add-ons** **What is the view of stakeholders on whether the requirements for the supervisory review process for insurers should also apply to IORPs?** As noted in paragraph 16.3.2 of the consultation document, a supervisory review process is implicit in the existing IORP Directive. We believe that this allows flexibility for states to design a process to suit their types of IORP and align with national legislation, particularly employment and social security law which significantly affect the operation of pension schemes. In particular, it is important that the supervisory process is flexible to accommodate the existing rules-based and risk-based approaches adopted across different Member States.	

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60	**What is the view of stakeholders on whether the requirements for capital add ons for insurers should also apply to IORPs?** For the same reasons that we do not believe that a SCR is appropriate for sponsor-backed IORPs (see response to question 38), we resist this provision as a blanket requirement across the EU. In addition, we consider that it introduces a potential risk that different Member States could apply this requirement in different ways, thereby reducing the degree of harmonisation and impeding the development of cross border arrangements. We believe that the supervisory authority should have the power to impose additional support requirements In the UK, as well as the supervisory authority having powers to intervene in the setting of technical provisions or imposing additional contributions, there are powers to impose what are called Contribution Notices or Financial Support Directions – both used only in extreme cases. The former are, in effect, instructions on a party (possibly the sponsor or even more widely drawn from those who are connected with the sponsor) to pay an additional amount. (This is similar to the 'capital add on' nomenclature of Solvency II.) The Financial Support Direction mechanism is where the UK regime is more refined as it allows the Regulator to bind a particular party (or parties) into providing adequate support for the IORP. Coupled with the UK's 'employer debt' legislation that means that employers cannot 'walk away' from pension commitments, this is as strong a member security mechanism as is reasonably possible to design. We have some concern that copying over a 'capital add on' requirement from the Solvency II Directive could lead to this 'immediate' capital injection becoming the only supervisory tool available – which would make DB schemes less attractive to sponsoring employers, compared with the more measured approach that the UK regulator currently employs.	
61	**CfA 12 Supervision of outsourced functions & activities** **Do stakeholders agree that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs?** Article 13 of the existing IORP Directive requires supervision of outsourced functions and allows flexibility for states to design appropriate means to achieve this. Rather than a more prescriptive approach, we prefer the current flexibility as it results in a regime which is more closely targeted at the issues that are relevant to each state.	
62	**What is the stakeholders` view on proposed changes to the definition of home state and rules on chain outsourcing?** 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. (On a particular point of detail, assuming that IORPs are required to 'register' with their supervisory authorities in all Member States, it might be prudent to make it clear that 'registration' is in this context. The reason for making this point is that 'registration' is the term used in the UK for IORPs (and third pillar individual, voluntary, personal pensions) registering for beneficial tax treatment. Importantly it is not a legal requirement that the IORP, or personal pension, be established, based or otherwise be 'registered' in the UK in order to register for such tax treatment.) Again, we favour casting any supervisory process in wide terms to allow the most effective, focused local response.	
63	**CfA 13 General Governance Requirements** **Do stakeholders agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality?** We agree with EIOPA's assessment and consider the proposals reasonable. In particular, we welcome EIOPA's strong guidance that the diversity of pension systems throughout the EEA must be recognised and that any measures implemented are proportionate; 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 to be disclosed if required. Whilst consistency of supervision, built on a common foundation of regulatory principles is prima facie attractive, changes from the existing arrangements will involve further costs. Ultimately in many instances these increased costs will have to be met (indirectly) by European citizens – members/participants of these pension arrangements. A serious assessment of the cost to members – for example through expected increase in 'charges' for members of defined contribution arrangements - should be carried out. We know from the excellent work carried out by the OECD and, most recently, in EIOPA's own report on 'Risks Related to DC Pension Plan Members', that costs represent a significant risk to citizens' retirement outcomes.	
64	**Has EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements?** The proposal to adopt a remuneration policy is sensible in the states where IORPs employ staff. We would not	

	expect this to have a substantial impact in the UK where IORP senior management would typically be employed by the sponsoring employer or be a professional services firm. We also have some concern that legislating in this area (which seems to be driven by a desire to replicate as far as is possible the requirements for insurers, rather than what is appropriate for IORPs, their sponsors or the IORP membership) might have a negative effect on those IORPs where the management/trustee body has largely comprised individuals who are not employed by the IORP per se. This appears to be recognised by EIOPA (in para 18.3.22 and 18.4.3) as suggesting that the policy should only be in those IORPs where it is relevant. To this end we endorse EIOPA's call for this to be subject to further analysis.	
65	**CfA 14 Fit and proper** **Do stakeholders agree the introduction of the same fit and proper requirements for IORPs as were introduced for insurance and reinsurance undertakings in article 42 (1) of the Solvency II Framework Directive?** We support the principle that the management of IORPs should be undertaken by fit and proper persons – it would be perverse to argue against this. Again, as with all Governance matters being considered by EIOPA and the Commission, proportionality is key. EIOPA has identified that there are in excess of 140,000 IORPs in the EU, compared with around 7,000 insurers. This should illustrate to decision makers that whilst some of the principles of Solvency II for insurers might be appropriate, some significant change in application to pension funds is essential. "Persons who effectively run the IORP" needs to be well-defined in law. All such persons should be "proper" but it should be unambiguous in the revised directive that "fitness" applies collectively and is measured by reference to the skills and knowledge required to run the specific IORP in question.	
66	**Do stakeholders agree with the advice that:** **The fit and proper requirements should apply at all times** **There should be effective procedures and controls to enable supervisory authorities to assess fitness and propriety** We agree in principle that the fit and proper requirements should apply at all times, but this must be clarified that this relates (at least in the fitness strand) to the management body as a whole, rather than 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. In this context a 'period of	

	grace' should be permitted for a 'lay member' of the management body to become familiar with the legal and supervisory regime in which the IORP is operating and to acquire knowledge and understanding appropriate to the role. Moreover, 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. Supervisory authorities should have the power to assess fitness and propriety but they should be subject to appropriate checks and balances. In particular the assessment should be reasonable and proportionate in the context of the IORP in question and not result in what would otherwise be an inevitable increase in costs.	
67	**What powers should supervisory authorities have in the event that the fit and/or proper requirements are not fulfilled?** There should be a power for the authority to remove an individual from office. However, where "fitness" is the issue then the primary focus should be on education first and enforcement, if required, afterwards. Where "propriety" is the issue then enforcement to protect members' interests should be paramount. Responsibility for supervising and ultimately dismissing other staff and external service providers should remain with the trustees/scheme managers.	
68	**CfA 15 Risk management** **What is the view of stakeholders on the proposed principles of the revised IORP directive? How do stakeholders evaluate the positive and negative impact of the proposed risk management principles?** We agree with the general thrust of 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. However, we do not believe it appropriate to have "on a continuous basis" written into the revised IORP Directive. EIOPA sets out in 20.3.8 to 20.3.11 that this might not be appropriate, as it finds it necessary to qualify what the wording means. We strongly feel that 'continuous assessment' is likely rarely to be proportionate. Moreover, as a general principle we favour wording in the Directive that is in itself clear and not such that it requires there to be an 'explanatory' manual. If the wording of the current Solvency II Directive is too vague (as here) then it militates in favour of drafting different wording relevant to IORPs. 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. In any event, we welcome EIOPA's recognition at 20.3.31 that communication is important in the context of life cycling and the operation of default funds.	
69	**CfA 16 Own risk and solvency assessment** **Do you agree with EIOPA that ORSA is, in principle, suitable for IORPs? Please provide evidence/reasons supporting your view** No. In principle it might be suitable, but we are not convinced that it can be implemented in a suitably proportionate way. In particular, we do not believe that there should be prescribed requirements as to financial assessments by schemes over and above periodic funding assessments. A prescribed ORSA has the potential to be onerous for employers and IORPs. 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.	
70	**What should be the scope of ORSA for IORPs where members bear all the risks? How do you assess the impact of introducing ORSA?** 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. There is, of course, a need to communicate with members – but this is dealt with in other areas of the consultation document.	
71	**What is the stakeholders' view of the necessity to perform ORSA in the event that the holistic balance sheet approach is adopted?** 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.	
72	**CfA 17 Internal control system** **What is the view of the stakeholders on the proposed new explanatory text on the whistle-blowing obligation of the compliance function?**	

	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. It needs to be clear that the timescale for reporting should to be appropriate to the risk to members' benefits and that individual whistle-blowers should be legally protected provided their whistle-blowing is "in good faith". It is not clear to us why the whistle-blowing obligation should be an option for Member States This may cause uncertainty and confusion in the case of cross-border IORPs.	
73	**What is the view of the stakeholders on the proposed new explanatory text on the scope (the fact that the compliance function should include all legislation with an impact on the operations of an IORP)?** 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	**CfA 18 Internal audit** **Do stakeholders agree that the material requirements of internal audit in respect of insurers should also apply to IORPs, subject to proportionality and other changes?** Again, in the UK, this should represent little change, beyond formalising what is already good practice, at least for larger pension schemes. 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. This should extend to the point that for some IORPs an 'internal audit' function is not appropriate. The principle should be that the requirement for an internal audit should be determined by reference to the cost of such a function versus the benefit that it delivers to members and beneficiaries.	
75	**What is the view of stakeholders on the proposed whistle-blowing obligation of the internal audit function?**	

	Any whistle-blowing requirement should also be very flexible, allowing for the different, proportionate ways of delivering the internal audit function.	
76	**CfA 19 Actuarial function** **What is the view of the stakeholders on the role and duties of the actuarial function of IORPs?.** We approve of the suggested adaptations of article 48(1) and 48(2).	
77	**Are the requirements of solvency II the correct starting point for the actuarial function?** Subject to the amendments proposed by EIOPA, the requirements look sensible.	
78	**Do you agree with the importance of independence of the actuarial function? What do stakeholders perceive as the necessary criteria for the independence of the actuarial function?** 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. The actuarial function's ability to provide objective actuarial information to the board of the IORP/its trustees must not be, and must not reasonably be seen to be, compromised. The actuarial function holder(s) must disqualify himself/herself/themselves if their duty to act in the best interests of the IORP conflicts with their own interests, the interest of their firm or the interests of other clients.	
79	**Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?** We believe that leaving the scope of the actuarial function to be clarified in local regulatory and actuarial standards would be the most robust and flexible way of coping with the heterogeneity of IORPS across the EU in a proportionate manner. Option 2 would be acceptable provided that the detailed requirements (including transitional requirements): • are proportionate to the benefit for IORP members • take proper account of the heterogeneity of IORPs across the EU, and • take proper account of the available actuarial resource. We agree the Option 1 is the minimum cost option.	

	We agree that Option 2 might have a positive effect on cross-border activity. We have a concern that overly precise description of the tasks of the actuarial function may reduce the level of responsibility taken by the professionals best qualified to make judgements in relation to the management of IORPs. We advocate a principles-based approach. We are not convinced by the suggestion that leaving the IORP Directive unchanged could result in an inability to make well informed decisions and that beneficiaries may suffer as a result. Of course if that gap is not filled, the consequences may be adverse. However we believe that leaving the scope of the actuarial function to be clarified in local regulatory and actuarial standards would be the most robust and flexible approach. The evidence of the UK does not support the assumption that Option 1 would require more supervisory resources than Option 2 – quite the reverse. In the UK far greater resources are required to supervise insurers than are required to regulate far greater numbers of IORPs. Moreover we consider that diversity in the information supervisors require to be an inevitable consequence of the diversity of IORPs and would be very concerned if the information collected were not to reflect that diversity. It is not possible for us to comment on the additional administration burden without more of the underlying detail of the scope of the actuarial function. We accept in principle that if the scope, tasks and qualification requirements are largely unchanged by the proposed Level 1 changes, the impact should not be high.	
80	**CfA 20 Outsourcing** **Do stakeholders agree that the material requirements on insurers in respect of outsourcing should also apply to IORPs?** We agree that the fundamental principle must be that the overall responsibility for the running of the IORP remains with the IORP itself and cannot be transferred to a provider of outsourced services. We welcome EIOPA's recognition that pension funds differ from insurers by, in many cases, outsourcing so many of the critical and important functions and activities. We consider that the requirements on insurers represent a sensible template but believe that a flexible principles-based approach is necessary to accommodate the full diversity of existing IORPs. Again, in the UK, this should represent little change, beyond formalising what is already good practice, at least for larger pension schemes.	
81	**Do stakeholders agree with the standardisation of outsourcing process in order to enlarge the cross border activity?**	

	No. Due to the diversity in scale and form of IORPs it would be inappropriate to standardize outsourcing processes across different Member States. We also do not consider that this would have the effect of increasing cross-border activity.	
82	**What are the minimum outsourcing contract elements stakeholders consider as useful to ensure the protection for IORP members and beneficiaries?** 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 of course be termination, liability, service levels and data protection. However, we favour a principles-based approach rather than trying to prescribe an exhaustive list.	
83	**CfA 21 Custodian / depository** **What is the view of the stakeholders on the proposed treatment of depositaries?** 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	**How do stakeholders evaluate the positive and negative impacts of the proposals?** 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.	
85	**What do stakeholders anticipate in terms of cost and other consequences of the implementation of a compulsory regime regarding the appointment of a depositary under options 2 and 3 for: (a) the safe-keeping of assets; (b) oversight functions?** We have a general concern that any options other than option 1 could add to the cost burden for certain forms of IORP. However, in the absence of any great detail as to what might b proposed, it is unclear how likely or material those additional costs might be.	
86	**What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements regarding: (a) the need for a written contract; (b) the role of a depositary in terms of safe-keeping; (c) the liability regime of depositaries; (d) the list of minimum oversight functions that should be perform; (e) conflict of interest?**	

	No specific comment.	
87	**Do stakeholders agree that the list of minimum oversight functions that should be performed by a depositary is appropriate?** The minimum list of oversight functions is a reasonable and necessary 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	**What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements that should be verified in case a depositary is not appointed?** No specific comment.	
89	**CfA 22 Information to supervisors** **Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?** We are not persuaded that Option 2 provides comparable information ('positive impacts: option 2, page 473') because the structural differences between IORPs and the wider social security framework in which they operate could make a substantial difference to the significance of any set of standardised information. We are concerned about the comment "Provides for information that could in future be necessary" to the extent that it implies that EIOPA envisages collecting information, which is often costly to produce, when it is not necessary. We are aware that EIOPA (and CEIOPS before it) has for some years cited its desire to collate particular information – such as asset allocations of IORPs. We believe that EIOPA should have to start from the premise of justifying why it wishes particular information to be collated, rather than incur the cost of obtaining that information on the off chance that it might at some time in the future be useful. In particular, we think that EIOPA should consider the extent to which the collection of data by supervisors has the effect of shifting responsibility from those running the IORP to the supervisor. We consider that a full impact assessment should be conducted once a detailed proposal of the information that might be collected has been formulated and that that impact assessment should include the cost of producing the information, the potential changes to behaviour that such measurement might induce, the cost of processing the information and the value added by any regulatory action that might flow from that information. We favour Option 1 because of our concern about the feasibility of creating a standardised set of information	

	requirements that is adequate for the supervision of the full range of IORPs across all Member States. We think it particularly important that supervisors are not required to collect the information but simply have the power to do so, subject to appropriate checks and balances on the exercise of that power. We consider that there should be a requirement to review the information that should be collected in future at intervals of no more than 5 years.	
90	**Would stakeholders welcome convergence of provision of information to supervisors: (i) completely; (ii) in certain fields; (iii) not at all.** We would favour convergence where it can be shown to be cost-effective and of material benefit. However, as noted, above we have a concern that convergence is potentially sub-optimal from a regulatory perspective in that standardised information may not adequately capture the relevant risks. Our view is that convergence is most likely to be achieved if standardisation were accomplished by specifying only the purpose that the required information is intended to serve: i.e. a risk-based approach.	
91	**CfA 23 Information to members / beneficiaries** **Do stakeholders believe that additional information requirements - besides the current ones - are not only necessary for DC schemes, but also for DB schemes?** We favour a principles-based approach: for example requiring that "sufficient timely information is provided for the member to make a well-informed choice". We agree with the principles set out in the draft advice and, in particular, that for DB schemes the contents of the information requirements under the current IORP Directive remain appropriate but that any mechanisms for adjusting benefits should be made clear. We believe that the structure of the IORP should dictate the information requirements: for example limited requirements for mandatory arrangements, extensive requirements for voluntary arrangements particularly where members are required to make many decisions It should also be recognised that: • Providing members with too much information can be counter-productive. • Past performance figures are often a poor guide to future performance • Standardised projections can be misleading Transparency promotes good governance	

92	**Are stakeholders happy with the potential introduction of a KIID-like document for DC schemes and with its contents as envisaged in the draft EIOPA advice? In particular are stakeholders happy with the introduction of a document (KID) that would contain information beyond investment? How important it is that this document facilitates comparisons between IORPs?** We welcome the principle of a KIID-like document to the extent that it satisfies the conditions set out in our response to Q91, but not on a prescriptive basis. We have reservations about the extent to which it is proposed to standardise the information because we believe that the diversity of information requirements arises from diversity of IORPs and the wider social security framework in which they operate. We believe that the amount of information supplied to the member should be limited to the information relevant to the choices available to them. The range of choices and different pension plan designs mean that (unlike insurance contracts) the degree of standardisation is likely to be very limited. Standardisation of information is usually linked to a goal of ensuring comparability. Comparisons between IORPs are rarely relevant – as the member will not have a 'choice' (beyond, where possible, the choice of not joining the IORP). There is, however, some merit in having a broadly standardised approach for those few situations where a bona fides cross-border arrangement is established. The benefit in this case being that the variations in IT systems (and administrative processes) to accommodate different countries' information requirements are minimised. Moreover standardised information is often sub-optimal - the good is the enemy of the best: i.e. standardisation may hinder innovation (and hence member choice) and result in some levelling down by IORPs whose disclosures to members represent current best practice. Supervisors and Member State governments can also play an important role by providing generic information for members We understand the desire for showing the effect of charges, where this affects member outcomes. However, requirements here should not be too prescriptive. In many situations the sponsoring undertaking will bear all or part of the costs (for example, administration and governance costs). It could be difficult, time consuming and of little (or no) value to try to quantify these for members. As a general tenet, information should be made available rather than issued automatically. We welcome EIOPA's acknowledgement that the KID should make it clear that it is only an information document and not a "legal source of commitments".	

93	**How would stakeholders suggest communicating in the KID the risk/reward profile and/or the time horizon of different investment options? Do they think that the risk ranking should be the same for all time horizons, or should vary with time horizons, allowing for a more favourable ranking of equity-oriented investment options for long horizons? How should performance scenarios be conceived? Should they vary for different asset allocations, allowing for a risk premium for equity-oriented investment options? What a reasonable measure of the risk premium would be?** We consider standardisation of the information requirements in respect of these details to be undesirable, unlikely to be cost-effective and potentially counter-productive. We think it would be much better to define objectives that such disclosures are intended to meet with specific reference to the decisions actually available to members. In particular, it is impossible to make meaningful and absolute statements about members' risk appetites and what is high/low risk without knowing more about their individual circumstances.	
94	**Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?** We consider that a mandatory annual statement would be inappropriate for defined benefit schemes – at least in relation to 'deferred' members who are no longer employed by the sponsoring employer - but support the concept of personalised annual statement to be delivered to each member of DC IORPs.] We think that DC statements should show the effect of charges on the accumulating benefit (where these are non-zero) and that this – as with other key information - should be done in a form that can be reconciled to the corresponding disclosure in the KID. Information about charges should be subsidiary to key information about ongoing choices and planning and employees should be given some guidance on the context of charges: for example, the cost relationship of passive vs active funds	
95	**What is the view of stakeholders as regards the level of harmonisation of information requirements that can be reasonably achieved with the revised IORP directive? Besides those envisaged by the EIOPA advice, are there other parts of the regulation that should be harmonized?** We believe that it is possible to achieve a degree of harmonisation in the 'look and feel' of information provided to members. However, there will be considerable variation dependent on the particular plan features of the IORP concerned and the IORP's place within the wider social security framework in which the IORPs operate.	

96	**Do stakeholders agree with the impact assessment of the EIOPA proposals?** We support the broad thrust of the proposals however we consider that EIOPA may be too optimistic about the impact and we are not persuaded that providing members with more information necessarily leads to a better outcome in terms of their retirement provision – it simply shifts the responsibility to them and away from supervisors and the professionals running the IORP. Indeed, evidence points to a very limited appetite for information, with a preference for greater guidance "what should I do?". We consider that EIOPA needs to publish the evidence that supports the contention that the additional costs are "clearly less significant than the benefits in terms of protection for members". Our experience is that even a small change to member disclosures can be costly to implement. Similarly until there is harmonisation of the wider social security framework, we would not agree that the proposals will materially benefit the market for pension provision as, in practice, members are rarely choosing between IORPs and, where the choice is between an IORP and an alternative arrangement, it is usually skewed by the availability or otherwise of some attractive feature like enhanced employer contributions so that differences in the available information are not material to the members' decision.	