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 Deutschland GmbH** Wettinerstr 3 65189 Wiesbaden **Germany** *Contact:Alf Gohdes, alfred.gohdes@towerswatson.com , Tel: +49 611 794 389* *Stephan Wildner,stephan.wildner@towerswatson.com ,Tel: +49 7121 3122 316* *Christian Odenthal,christian.odenthal@towerswatson.com ,Tel: +49 611 794 135* 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 from a German 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
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	○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	Comment	
General comment	We thank IOPA for the opportunity to comment on its draft Response for the EU Commission's Call for Advice on the review of the Pensions Directive. We point out that in respect of the upheavals in the financial markets since 2007, IORPs have not been the source or the transmitters of systemic risk but rather the victims thereof. Although we agree in principle that it is appropriate to review the Directive, the importance of IORPs for both the citizens of the EEA and the financial markets should make it obvious that the preparatory work leading to any amendments to the Directive must be circumspect (or holistic) in nature. We therefore very much support the exposure this draft advice is being given. We challenge the central assumption taken by both the Commission and EIOPA in the development of the revised Directive, namely that insurance and pensions business is so similar, that the same principles for regulation can be used as a starting point. We believe that an IORP's business model, ownership structure, risk profiles and legal framework it is subject to, are sufficiently different from those of an insurer so as to warrant a fundamentally different regulatory regime. We therefore strongly recommend to maintain the clear distinction between Article 17(1), 17(3) and sponsor-backed IORPs. We consider that most IORPs - in particular single-sponsor IORPs - are sufficiently different from insurers to justify a fundamentally different regulatory regime. As a consequence we recommend in the following that Solvency II capital requirements should not be adopted to sponsor-backed IORPs and that the holistic balance sheet approach should be applied (if at all) in a differentiated manner – otherwise it would not reflect the diversity of European IORPs. In particular, we believe that the holistic balance sheet approach will only meet the characteristics	

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	of sponsor-backed IORPs and to some extent Article 17 (3) IORPs, if the sponsor covenant together with a pension protection scheme are applied to cover effectively all liability positions on the holistic balance sheet.	
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3.		
4.		
5.	We believe that the Commission's instructions as to the outcome limit EIOPA's scope here. We agree with 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	

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	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. 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 purely 'supervisory' in nature. 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 (e.g. 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 disputed 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 Budapest Protocol.	
6.	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.	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	

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	as an issue it would have arisen by now.	
8.	We believe that 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.	This should be a matter for individual Member States to determine in the context of their national pension systems.	
10.	We agree with EIOPA's broad analysis, but believe that the extent to which Member States consider defining prudential regulation as an indirect limitation on their competence over Social and Labour Law (SLL) may be underestimated. 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 currently exists.	
11.	It is not possible for us to comment meaningfully in the absence of any concrete proposal from EIOPA as to what the new 'article' in the Directive might look like. It will, however, be essential for the Commission to consult on any proposed new wording in order that appropriate analysis of the proposal can be made.	
12.	We believe that the distinction between Article 17 (1), 17 (3) and sponsor-backed IORPs should be retained. The reason for our opinion is linked very closely to the notion of the holistic balance sheet. We consider that the holistic balance sheet has conceptual appeal. However, we strongly reject the notion of applying the principles of Solvency II risk-based capital requirements determined on a market-consistent basis to IORPs. We caution that if implementation is a failure, the negative consequences for IORPs will be grave for both a very large number of citizens in the EEA and the financial markets. We would expect that implementation of the concept can take place in one of (at least) two fundamentally different ways: The first approach: The holistic balance sheet is applied in a manner that is rather	

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	qualitative than quantitative. This would increase the transparency of an IORP's financing to the various stakeholders. In this way we believe that risk-based regulation can be achieved without implementing risk-based capital-adequacy requirements that are determined on a market-consistent basis. We strongly recommend that this approach be taken. The second approach: The holistic balance sheet approach is applied strictly quantitatively as a basis for determining risk-based capital requirements. If this approach is chosen, it should take the following into account: 1. The key quantitative parameters of the Solvency II model should not be copied unchanged to IORPs but take appropriate account of the differences between IORPs and insurers mentioned below. In particular, the enhanced security provided by the employer covenant and by insolvency protection institutions should be taken into account in the same way as financial assets. Furthermore, the "softness" of an IORP's obligation must be taken into account when assessing the discount rate for discounting obligations. 2. A sufficiently balanced, clear and simple guidance for determining the different components of the holistic balance sheet must be ensured. For example, sponsor-backed IORPs should be allowed to include the sponsor covenant as a (contingent) financial asset which can be applied to cover all liability positions/capital requirements on the balance sheet. 3. A very significant simplification and easing must be permitted in accordance with the principle of proportionality. For instance, smaller funds should be permitted to prepare their balance sheets in simplified form (or excluded altogether) and only in intervals of several years. 4. The transition period for implementation must be suitably long to allow time for adjustment.	

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	Our reasons for our opinions are as follows: **Starting point** We point out that in respect of the upheavals in the financial markets since 2007, IORPs have not been the source or the transmitters of systemic risk but rather the victims of systemic risk. Although we agree in principle that it is appropriate to review the Directive, the importance of IORPs for both the citizens of the EEA and the financial market should make it obvious that the preparatory work leading to any amendments to it must be circumspect (i.e. holistic) in nature. 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 often expressed goal of "same risk, same capital" is misleading. **Do IORPs differ from insurers ?** We challenge the central assumption taken by both the Commission and EIOPA in the development of the Pensions Directive, namely that insurers and IORPs are so similar, that the same principles can be used as a starting point for regulation. We do not think that this assumption is appropriate and explain our reasons below. It can be argued that the main justification for regulation lies in the necessity to protect interests of policy holders in order to reduce or eliminate asymmetries of information / potential conflicts of interest between the insurer and policy holders (principal-agent problem). The different business models between IORPs and insurers are also reflected in the different ownership structures, legal frameworks, diversity and risk profiles, which we discuss below and which point to a significantly reduced need for regulation of IORPs.	

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	1. The business model: The vast majority of insurers (and effectively all of the major players) is profit-oriented and operate in a competitive market. Neither applies to IORPs, whether company-own or restricted to a profession or a pre-specified set of beneficiaries (e.g. members of a profession) alone. IORPs in this sense do not include those that compete directly with insurers in the pensions market. **2. Ownership structure:** The vast majority of insurers (and effectively all of the major players) is oriented towards the capital markets, i.e. the shares in the entity are effectively held-for-sale by its owners. In contrast, an IORP that is not in open-market competition is held by a single owner (or its beneficiaries if a mutual structure) and is essentially held-to-maturity, since the entity as such is not publicly traded. It follows that, for measurement, supervision and capital-adequacy purposes, a mark-to-market or fair value approach is appropriate for insurers. In contrast, elements of a fulfilment value or held-to-maturity approach can be taken into account to a greater extent for IORPs. A corollary of this aspect is the entity's access to capital: Insurers generally have direct access to capital markets to raise capital in equity of debt form while IORPS generally do not have access to capital markets for capital: they are restricted to the sponsor or their beneficiaries for capital. **3. Legal framework:** This aspect is dealt with partly in section 2.6.5 of the draft response. We believe, however, that not all repercussions have been considered. Insurance contracts are contracted in a free and open market (i.e. the consumer has a choice) and are therefore subject to contract/civil law because beneficiaries are contract holders. In contrast, in most countries, pension promises are subject to labour law, which can differ significantly from contract law; the consumer is thus generally not operating in a free and open market. In Germany, for example, the underlying contract is generally agreed upon	

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	(and amended) by collective bargaining agreements. The individual employee does not give his consent nor can he disagree, even if his rights are reduced. Another characteristic of the German pensions environment is that, even in defined contribution-like vehicles, the investment vehicle for employee contributions is typically determined exclusively by the employer. The corporate pension promise can be "softer" and more malleable in the context of an IORP (for example, in Germany, pension agreements can be and are changed by agreements with employee representatives, not every employee individually - often with legal effect for accrued benefits too). Actuarial valuation principles of liabilities and security requirements for IORPs must thus reflect the prevailing labour and social law and take account of this flexibly over time since labour and social law are not static. In short, insurers generally grant "hard" individual guarantees while IORPs grant "softer" guarantees, often on a collective basis. In some member states (e.g. Germany, The Netherlands), most IORPs do not necessarily guarantee benefits at all, since the fund has the right to reduce the benefits in accordance with the assets available – i.e. "soft" benefit ambitions rather than "hard" guarantees. This framework is clearly more flexible than that typically applying to life insurers. This flexibility is often justified, to varying degrees, by the existence of an employer covenant. In Germany, for example, in the vast majority of situations the law requires an employer to underwrite any shortfall not met by the fund. In some jurisdictions there is a further safeguard: should the employer too be unable to fulfil the pension promise given, the promise can be protected by an insolvency protection institution for occupational pensions. Within the context of the holistic balance sheet we understand that EIOPA and the Commission interpret the value of the employer covenant and the insol-	

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	vency protection as not being assets that can be directly held against the technical provisions but rather only against the SCR and the Risk Buffer. We believe strongly that this approach is unjustifiable and unnecessarily restrictive when viewed in the context of an IORP's characteristics. **4. Diversity:** This aspect is partly dealt with in 2.6.7. However, we believe that here too, not all repercussions have been considered. There are about 5,000 insurers and about 140,000 IORPs in Europe. As EIOPA quite correctly states, the aspect of relative cost of satisfying any regulatory requirements is thus of much greater significance for IORPs. However, EIOPA does not mention that the types of products offered by IORPs (i.e. pension promises) are far more diverse in nature than insurance products. The combination of this numbers / diversity issue must have a significant repercussion on regulation, since otherwise, diversity will be stifled deliberately. The result will very likely be that all risk will be shifted onto beneficiaries, thereby reducing the level of benefits. We believe that this aspect falls firmly into the area of social policy and should not be brushed aside by the Commission as "not our responsibility". **5. Risk profiles:** Typically, insurance contracts exclude a large number of specific risks (e.g. unhealthy lives), whereas IORPs are more inclusive (because normally all employees are to be covered). These five key differences between insurers and IORPs show that substantially different regulatory and supervisory regimes are necessary for IORPs. **Robust, quantified impact assessments** As has long since 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,	

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	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. **A closing thought** If the Commission argues that 3rd pillar regulation (i. e. that of insurers) should also be imposed in principle on the 2nd pillar (i.e. that of IORPs) it should consider carefully whether it is thereby destabilising structures that have existed for decades or even centuries by reducing diversity and therefore increasing the likelihood of systemic risk. We believe that the three pillars of pension provision are a well established blend of distinctly different approaches that make the combined, diversified system of retirement provision more resilient (and holistic!) than narrowing down the alternatives to two or even one approach. To develop this point to its logical conclusion, the Commission should answer the question why extending 3rd pillar regulation to the 1st pillar (i.e. that of social security) is not being proposed simultaneously. Why are the reasons for not extending to the 1st pillar "highly political" and the reasons for extending it to the 2nd pillar not so?	
13.	We agree provided that market-consistency does not mean a strict mark-to-market valuation. The definition of "market-consistency" should be clarified in order to prevent the misunderstanding that market-consistency is a proxy for market value. In appropriate circumstances, valuations rules should permit methods that reduce short-term volatility of values over time for regulatory purposes. For a long term investor like an IORP such an addition is not only reasonable but required, also with respect to the desired countercyclical investment policy of IORPs. E.g. 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 to adopt a valuation basis that they consider appropriate and subject to the oversight of the national regulator.	
14.	We strongly prefer option 1. Although there are different interpretations of 'pru-	

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	dent', 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. Option 2 would only be a reasonable approach if pension promises were of a contractual nature similar to insurance liabilities. However, this is not often the case as explained in our answer to question 12. Perhaps a greater issue is the focus on risk-free assets that this 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. Current distortions in government bond markets, and for other low-risk assets such as swaps, this means that a standard based on market-consistency will be volatile and prone to stresses that require external intervention to resolve. A market-consistency requirement for IORPs based on risk-free assets would reinforce pro-cyclical behaviour in markets. We agree that the new IORP Directive should contain no reference to transfer values.	
15.	We agree with this assessment, since the business model of an IORP is such that its credit worthiness is almost always not even theoretically appropriate.	
16.	We would welcome compatibility between accounting and supervisory standards under the condition of precedence of local accounting standards. In Germany, local accounting standards are the foundation for the management of an IORP, e.g. with regard to the amount and timing of surplus distribution and should therefore remain the basis for capital requirements. Deviations from local accounting requirements will lead to internal contradictions. If these are to be ignored, subsidiarity and proportionality considerations must be taken into account.	
17.	We agree, in principle, if EIOPA's interpretation takes due account of an IORP's	

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	special characteristics. For example: Article 76 (4) is consistent with the current IORP Directive, although "prudent" would have to be interpreted in a manner commensurate with an IORP. The same goes for the interpretation of "make use of" in Article 76(3). 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.	Option 1 is acceptable if no changes are made to the current IORP approach to valuing liabilities. If a market-consistent approach is adopted to valuing liabilities, Option 2 would lead to a very substantial increase in technical provisions (including the risk margin) for all German IORPs. If the intention is to follow this line against all concerns expressed, a detailed quantitative assessment and a broad political debate would have to be conducted in advance of implementation. Option 3 has the appeal of having a lower impact on IORPs' funding requirements and, possibly, at a reasonable level.	
19.	We agree that the calculation of technical provisions should take account of pension rights earned on the basis of both past and future contributions. However, something else could apply if, on the basis of a contractual agreement or an entitlement under labour law, future contributions can be excluded.	
20.	We agree.	
21.	From our perspective both options presented, a risk-free discount rate or any intermediate approach, would lead to highly volatile liability amounts. If, as should be the case, consistency between the valuation of assets and liabilities is intended, we believe that this is best reflected by setting the discount rate with regard to the expected future return of the financial assets. We can be of assistance in	

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	proposing models to determine such expected returns. However, 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. This option would considerably reduce incentives for pro-cyclical investment behaviour, which would be a particular concern with option 2. Under Option 3 we continue to be concerned about the level and 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 the use of the 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.	
22.	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 during active service for 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. If the employer bears the administration costs, these should not be taken into account in the technical provisions at all.	
23.	Just as unconditional benefits must be included, we believe that entirely discretionary benefits should be excluded from technical provisions, since otherwise they would not be discretionary and effectively imply unconditionality. As to conditional benefits, we believe it is important to fully take account of the circumstances under which conditionality applies. We believe that there are many different variations of this theme in Europe and that this will change further in a number of member states. Care needs to be taken here too, that conditional benefits do not "slip" into unconditional benefits by virtue of a poor definition.	
24.	We agree. However, there is a need to distinguish contractual options from condi-	

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	tional or discretionary ones.	
25.	We agree that it is useful to perform an appropriate segmentation when calculating technical provisions as long as it is reasonable and proportional to do so.	
26.	We prefer option 1 as to the treatment of recoverables from reinsurance contracts and special purpose vehicles.	
27.	We agree. The quality of data has always been an important prerequisite for an actuarial valuation of an IORPs technical reserves. The use of approximations or individual case analyses should continue to be performed where considered reasonable. An escape clause would be useful. This corresponds to methods currently in operation in Germany.	
28.	Yes. It is indeed useful to regularly compare best estimate assumptions against experience. This corresponds to current practice in Germany.	
29.	We agree. Upon the supervisor's request, it is sensible for an IORP to be required to demonstrate the appropriateness of the technical provisions and the valuation methods used. However, IORPs should be given greater latitude in their choice of methods when determining technical provisions. All the more so, when applying the holistic balance sheet approach, since this would require significant adjustments to appropriately take account of the particular circumstances of the fund and specific national characteristics.	
30.	We agree. The supervisor should indeed have the right to demand an increase in the technical provisions if they do not satisfy the requirements. However, the supervisor must also allow IORPs an adequate recovery period, e.g. by agreeing on a plan that allows sponsors enough time and sufficiently takes account of available sources of surplus, employer covenants and insolvency protection schemes.	
31.	The central question here is that of subsidiarity: is it necessary for the Commission to adopt all implementing measures or should national regulators be respon-	

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	sible for certain aspects? We believe that most implementing measures should be in the hands of national regulators, who can apply detailed knowledge of the circumstances of IORPs in their jurisdiction. 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.	
32.	We disagree. For the reasons stated above, the national supervisor should be given sufficient freedom to set additional rules so that the specific characteristics of IORPs in their area of jurisdiction can be appropriately and flexibly catered for.	
33.	If the notion of the holistic balance sheet is to be embraced, we believe that the sponsor covenant together with any existing insolvency protection scheme should be taken into account as (contingent) financial assets. The value of these two safeguards should equal the difference between required financial resources and actual financial assets. An explicit measurement of a sponsor covenant would require all characteristics to be taken into account – e.g. benefit reduction mechanisms, adjustment of future contributions, obligation of the sponsor to make good any deficit, etc.). Since, presumably, such determinations are highly complex, we emphasise again that significant simplification and even total exclusions should apply in order to satisfy the principles of proportionality and a reasonable relationship between costs and benefit of this exercise. Of particular importance is that any detail as to how this is to be determined should be included in the revised Directive itself and not left to, for example, Level 2 implementing measures. Since, presumably, such determinations are highly complex, we emphasise again that significant simplification and even total exclusions should apply in order to satisfy the principles of proportionality and a reasonable relationship between costs and benefit of this exercise.	

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34.	We agree in principle, although for IORPs, the sources of capital differ substantially from those available to insurer. Also the issue of tiering is questionable if the capital giver is the one providing the covenant.	
35.	We agree that subordinated loans from sponsors should be permitted.	
36.	We agree. We believe that a uniform probability would not take proper account of the different hard-/softness of benefit amounts. Even within a single member state, the social partners and the IORP can agree on different security levels.	
37.	We disagree. A one-year time horizon is not necessary and would be counterproductive in the context of IORPs since it would set the wrong incentives and emphasis for investment strategy. A long-term and sustainable investment strategy would be made very difficult if not impossible. This in turn would negatively impact the sponsor's financing costs and/or the beneficiaries' amount of benefits. Instead, there should be a reference to meeting future payments i.e. ensuring adequate liquidity should be the focus of any solvency regulation for IORPs and not the improbable danger of over-indebtedness.	
38.	We reject the proposal of applying Solvency II principles for calculating SCRs for IORPs for the reasons given below and in our response to question 12. The focus should be to set an appropriately prudent long-term technical provisions target, with a flexible approach to reaching the target and implemented by national regulators. 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 very different: • Solvency II is intended to strengthen the confidence of policy holders and capital markets in the financial reliability of insurers. For IORPs labour law and national insolvency protection schemes assume this role so that beneficiaries can rely on a pension promise they hold. Therefore, unwarranted additional protec-	

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	tion should be counterproductive and can be expected to lead to employers passing all risk onto employees, thereby reducing diversity, cost efficiency and employer involvement, a result that must at the very least be questionable from a social policy point of view. • Due to an IORP's characteristics ("softer" guarantees than insurers, can often rely on both the sponsor covanant and pension protection schemes) it would be misguided if it were forced to hold assets and/or capital of an amount equivalent to that of insurers. • IORPs are typically not-for-profit organizations that 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 reasonably possible. • Insolvency insurance schemes insure 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. • The calculation and reporting of the SCR is an onerous part of the Solvency II regime for the insurers. For many IORPs that are a fraction of the size of the average insurer, it seems disproportionate to require the calculation of a risk-based SCR.	
39.	Our strong preference is not to impose the SCR on IORPs. If the SCR is to be determined on the basis of Solvency II regulations, than the assessment should be on three-yearly basis. An annual assessment would put excessive pressure on most IORPs' resource infrastructure.	
40.	In keeping with our opinion on the introduction of the SCR, our strong preference is not to impose the MCR on IORPs. If it were accepted that the SCR should **not** be required for IORPs, then the MCR would also be inappropriate. 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	

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	the potential benefit for IORP members.	
41.	Since pension protection schemes considerably reduce the default risk for beneficiaries should the sponsor default, it is only right that such systems are included as a risk minimising factor within the holistic balance sheet approach. We consider it more appropriate to recognising it as an asset, since recognising it by reducing the sponsor's insolvency risk does not necessarily mean that it increases the value of the employer covenant, because the latter is not only dependent on the credit worthiness of the sponsor.	
42.	Conceptually, we agree that operational risk should always be considered and controlled, whether a DC or a DB plan is being considered. Taking into account the different characteristics of IORPs as opposed to insurers as well as the complexities of determining its value, this aspect of risk may be ignored for practical purposes.	
43.	In Germany, IORPs are already currently obliged to inform the supervisor when their financial situation worsens (e.g. by having to perform stress test). The German supervisors has wide-reaching powers to impose measures to ensure that obligations are met. The rules applicable to benefit reductions require the IORP to obtain the supervisor's approval before implementation.	
44.	The periods prescribed in Articles 138 and 139 of Solvency II are too rigid and in most cases, too short. For IORPs, the length of the recovery period should be flexible and aligned with the duration of the liabilities, i.e. with a generally very long duration and should be agreed upon with the supervisor. Account should also be taken of an IORP's capacity for loss absorption by additional contributions from the sponsor. In doing so, a balanced decision needs to be made between the best interests of the beneficiaries on the one hand and the potential of an employer burdened by too stringent funding requirements for his IORP.	

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45.	We disagree. The free disposal of assets should not be automatically withdrawn if an IORP does not comply with solvency requirements. In the first instance it should be checked whether the rule relating to benefit reductions can alleviate the IORP's situation and whether the fund has set up a reasonable recovery plan. Only if these measures are not effective, should supervisors in the second instance prohibit free disposal of assets.	
46.	We agree. If an IORP cannot meet the solvency requirements, it should be required to submit to the supervisor a financial restructuring plan and agree future steps with the supervisor (this is similar to the approach already in place for certain types of vehicles in Germany).	
47.	Yes. The prudent person principle should remain the basic principle in a revised IORP Directive. The prudent person principle forces IORPs to make only investments which serve the interest of participants and pensioners.	
48.	We agree with EIOPA that, in the interests of prudential oversight and protecting member interests, it may be appropriate to permit Member States to impose investment limitations; but only in relation to cases where the members/participants bear the investment risk.	
49.	There should be no differentiation in investment regulation between defined benefit and defined contribution pensions. In both cases the prudent person principle should be the basic principle. Any deviation from that principle will result in suboptimal investment outcome. However, if Member States were granted the (optional) power to impose more restrictive provisions for DC arrangements, there should be room to reflect specific differences between countries (for example in Germany defined contribution-like investment vehicles for employee contributions are typically determined by the employer).	
50.	We broadly agree. The overall direction of the regulation of investment strategies	

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	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. It is clear that the key aspects in the Call for Advice 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 equities (and other such 'return-seeking' asset classes) in favour of Government bonds. This will likely exacerbate not reduce the pro-cyclicality risk.	
51.	Under the prudent person rule, there is no need for such prohibition.	
52.	It is important that EIOPA considers how any rules that are eventually adopted will impact on the operation of markets and whether they maximise chances for solvent institutions to ride out temporary price adjustments or extreme circumstances. We would disagree with the statement in 12.3.13 "Although the impact of IORPs on financial systems is probably limited compared to the role of insurance companies". Collectively, IORPs in member states with significant defined benefit liabilities (and consequently investments to meet those liabilities) will be systemically relevant. 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 is surely also probable for other asset classes. The extent to which true solvency for IORPs is impacted by the price movements in government backed securities used as proxies for risk-free assets is something EIOPA should consider when building rules in this area. Whilst there may be benefits, the existence of a more prescriptive IORP Directive for individual regulators to implement increases systemic risk by its nature. Governing all IORPs by the same rules makes it more likely that their actions will be more closely aligned, which in turn can be expected to lead to new systemic risks that are not in the current system.	
53.	We believe that supervision should be applied in a proportionate manner. As recognised by EIOPA in 14.3.7 the requirement that supervision should involve verifi-	

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	cation on a continuous basis might not be appropriate or proportionate for all sponsor-backed occupational pension schemes. It is essential that the wording from article 29(1) is not merely replicated in a revised IORP Directive. Rather the wording should be modified to amend 'continuous' to something more appropriate to the range of IORPs present across Europe. 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.	
54.	We believe that EIOPA has not holistically dealt with the differences between insurers and IORPs. As set out in our general comments, we believe that EIOPA has insufficiently taken account of the fundamental differences in business models, legal environments, diversity, risk profiles and the basic economics of IORPs. An in-depth understanding of the differences throughout Europe is essential before restructuring the supervision of IORPs.	
55.	We agree with EiOPA that supervisory authorities should have "broadly" the same powers as it has in respect of insurers. We probably understand "broadly" here to be wider in scope than EIOPA understands it: We believe that, in particular, proportionality, subsidiarity and the consequences of IORPs' characteristics should be taken into account.	
56.	To the extent that the provisions of the directive are to be exercised consistently and transparently, we agree. Otherwise we are not convinced that any further reinforcement is required.	
57.?	The supervisory authority should be able to make public the imposition of penalties in the most serious of cases e.g. those where certain approaches cause regulatory concern in the event of such approaches becoming widespread.	
58.	As is currently the case 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 defi-	

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	cient 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.	
59.	A supervisory review process is already part of 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.	
60.	We disagree strongly with such a requirement. This is consistent with our position that a SCR is not appropriate for sponsor-backed IORPs.	
61.	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.	We agree with the proposed clarification in the case of cross-border service providers, chain outsourcing and the definition of Home state. We favour casting any supervisory process in wide terms to allow the most effective, focused local response.	
63.	We agree. 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. 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.	A remuneration policy is sensible where IORPs employ staff. We would not expect this to have a substantial impact in most countries due to the business model of an IORP typically differing from that of an insurer.	
65.	We agree wholeheartedly that the management of IORPs should be undertaken by fit and proper persons. Again, as with all Governance matters being considered by EIOPA and the Commission, proportionality is key. "Persons who effectively run the IORP" needs to be well-defined in law. All such persons should be "proper". It	

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	should be unambiguous that "fitness" applies collectively and is measured by reference to the skills and knowledge required to run the specific IORP in question.	
66.	We agree in principle. 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. In particular, the assessment should be reasonable in the context of the IORP in question.	
67.	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, second. Where "propriety" is the issue then enforcement to protect members' interests should be paramount.	
68.	We agree with the proposed risk management principles and support the non-exhaustive list and applicability approach.	
69.	We disagree and do not believe that this is a reasonable presumption. The notion of an ORSA does not fit easily within the framework of IORPs - otherwise it would have been included in the current IORP Directive, or mentioned in the international standards, guidelines and good practices. 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, taking into account possible scenarios for changes in investment strategy and general financial conditions. Inevitably, such an approach would involve approximations and a degree of qualitative assessment. In principle, pension schemes should carry out this type of assessment as part of the scheme's ongoing risk management processes but the form and content should not be prescribed. The assessments need to reflect the circumstances of the scheme. A flexible risk-based approach should be allowed to continue	
70.	We do not see that a separate requirement for an ORSA would add to members'	

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	protection. There is, of course, a need to communicate with members – but this is dealt with in other areas of the consultation document	
71.	We do not believe that a prescriptive ORSA style approach is appropriate.	
72.	If there is to be a requirement that IORPs must have a compliance function to assess the effectiveness of their internal control system, it is very important that IORPs should have maximum freedom as to how they achieve this. Any whistle-blowing obligation which is imposed must also be sufficiently adaptable to remain appropriate to the different ways of delivering the compliance function. 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".	
73.	If there is to be a requirement that IORPs have a compliance function it would be reasonable that its scope should extend to all legislation with an impact on the operations of the IORP.	
74.	We agree.	
75.	See our answer to question 72.	
76.	We agree with the suggested adaptations of Article 48 (1) and 48 (2).	
77.		
78.	It is important that the actuarial function should be independent from the IORP. However, 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.	We believe that leaving the scope of the actuarial function to be clarified in local	

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	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 requirements are proportionate. We agree option 1 is the minimum cost option and that option 2 might have a positive effect on cross-border activity. We would challenge the assumption that option 1 would require more supervisory resources than option 2. Far greater resources are typically required to supervise insurers than are required to regulate far greater numbers of IORPs.	
80.	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 IORPs 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.	
81.	We disagree. 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.	The minimum outsourcing contract elements will need to be determined by the board of the IORP on a case by case basis, having regard to what is appropriate in the circumstances. Typical key contract areas will of course be termination, liability, service levels and data protection. We favour a principles-based approach rather than an exhaustive list.	
83.	We favour option 1, leaving to member states the decision of whether to make the appointment of a custodian or depositary compulsory. The diversity in terms of a scale and form of IORPs means that this decision is best left to member states to decide what best suits the needs of their own occupational pension systems.	
84.		
85.	In principle we support the appointment of a custodian for IORPs – subject to the	

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	issue of proportionality in relation to cost. We believe that formalised oversight functions can become particulary onerous for smaller IORPs.	
86.		
87.	The minimum list of oversight functions is a reasonable and necessary one. However, we believe that it should be for member states to decide to what extent they should be included in their requirements for the appointment of a custodian or depositary.	
88.		
89.	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 are not persuaded that option 2 provides comparable information 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 may be costly to produce, when it is not necessary. 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 with only the hope that it might be useful.	
90.	We would favour convergence where it can be shown to be cost-effective and of material benefit. 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.	
91.	We favour a principles-based approach and agree with the principles set out in the draft advice. In particular, for DB schemes, the contents of the information requirements under the current IORP Directive remain appropriate. However, any mechanisms for adjusting benefits should also be made clear. We believe that the structure of the IORP should dictate the information require-	

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	ments: for example limited requirements for mandatory arrangements, extensive requirements for voluntary arrangements particularly where members are required to make 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.	We welcome the principle of a KIID-like document but not on a prescriptive, boilerplate 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. Unlike insurance contracts the range of choices and different pension plan designs mean that the degree of standardisation is likely to be very limited. Standardisation of information is usually linked to a goal of ensuring comparability. Achieving such comparisons between IORPs is 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 legitimate 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. The effect of charges should be shown if this affects member benefits directly We welcome EIOPA's acknowledgement that the KIID should make it clear that it is only an information document and not a "legal source of commitments".	
93.	As already mentioned above, 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	

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	intended to meet with specific reference to the decisions actually available to members.	
94.	We support the concept of a personalised annual statement to be delivered to each member of an 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 KIID. 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.	We believe that it is possible to achieve a degree of harmonisation. However, even the 'look and feel' of information provided to members will differ considerably depending on the member state, corporate culture and particular plan features of the IORP concerned and the IORP's place within the wider social security framework in which the IORPs operate.	
96.	We support the broad intentions 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. Indeed, for DC members there is a possibility that providing information that shows a decreasing fund will prompt some to move from 'return-seeking' assets to 'low-risk' assets even though this may not be in their long-term interest. 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	

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	skewed by the availability or otherwise of some attractive feature like enhanced employer contributions so that differences in the available information may not be material to the member's decision making.	