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:	European Private Equity & Venture Capital Association (EVCA)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.	Public
	The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006). **Please follow the instructions for filling in the template:** ⇨ Do **not** change the numbering in column "Question". ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below. ○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies. ○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	**Comment**	
General comment	• The European private equity and venture capital industry welcomes the opportunity to comment on EIOPA's Response to Call for Advice on the review of Directive 2003/41/EC: second consultation. EVCA will focus its comments on this consultation on the areas of key relevance relating to the private equity and venture capital industry.	

- EVCA is still not convinced of the justification for a revision of the IORP Directive: EVCA demands a thorough and comprehensive impact assessment study to be conducted before any revision is proposed. Such impact study must in particular include the macro-economic impact such new rules may have, which seem to have been widely disregarded up to now. EVCA wishes to point to the adverse impacts on economic growth and long-term investment, such as investment in infrastructure, real estate and non-listed companies, in particular small- and medium-sized companies, the backbone of the European economy. In addition much of the EIOPA and European Commission documents are inspired by a "consumer protection" language. EVCA considers this inappropriate. Occupational pension plan members do not freely choose a pension. It is therefore not a financial product but a not-for-profit scheme.

- Pension funds invest in the private equity and venture capital asset class as the characteristics of such investments corresponds well with their long-term investment horizon and meets their interest to invest in an asset class of substantially different characteristics compared to listed equities and bonds. Private equity funds, which operate over at least a ten year period, have for many years been trusted by many of Europe's largest stewards of current and future pensioner's income as a source of stable, strong, risk adjusted returns. This explains why, in the period from 2006 - 2010, pension funds accounted for over 36% of all funds raised by the European private equity industry[1].

- As well as delivering strong returns to pension funds - critical for defined benefit funds to be able to meet their pension liabilities as they fall due - private equity also provides the long-term investment needed to deliver growth in the real economy. It is this long-term growth, sustained by long-term capital, that provides a foundation for job creation, investment and tax revenues. Over the past four years, European pension funds have invested €53bn, via private

[1] This figure includes pension funds invested through funds of funds in addition to direct investments.

	equity, in European companies. A total of 83% of private equity backed companies are small to medium sized enterprises ("SMEs"), which constitute the backbone of the European economy.	
	4. CfA 1: Scope of the IORP Directive	
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	5. CfA 2: Definition of cross-border activity	
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	6. CfA 3: Ring fencing	
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	7. CfA 4: Prudential regulation and social and labour law	
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	8. Quantitative requirements	
12.	**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?** EVCA rejects the proposal of a holistic balance sheet when it is used for supervision. The idea of a holistic balance sheet seems to offer theoretical possibilities for taking into account the risk mitigating instruments that an IORP has, but the complexities involved make this an instrument that is unsuitable as a primary supervision tool. Besides that, it is important to realise that workplace	

pensions are based on social and cultural traditions and strongly linked to first pillar pension provisions in the different Member States.

EVCA's key message regarding the application of the Solvency II regime to IORPs

EVCA's key concern is that the potential application of the Solvency II regime to IORPS (whether under option 1 for Article 17(1) IORPS or under the option 2 holistic balance sheet approach for IORPs generally) would be inappropriate and disproportionate. It could affect pension funds' investment strategies resulting in a number of negative consequences for pension funds and their members and the wider economy. In particular, EVCA urges EIOPA to ensure that any calculation of private equity and venture capital market risk is appropriate.

Potential application of Solvency II regime to IORPs

In the context of CfA 6 (on a similar approach for all types of IORPs), EIOPA proposes two alternative options:

"*Option 1: Maintain the existing distinction between Article 17(1), Article 17(3) and sponsor backed IORPs in the review of the IORP Directive*

Option 2: Review the IORP Directive in a way that is flexible enough to allow for all kinds of IORPs through the holistic balance sheet approach"

EVCA notes that EIOPA considers (at paragraph 8.2.36. a.) that option 1 could potentially include "*the option of applying a Solvency II regime to Article 17(1) IORPS*".

EVCA also notes that EIOPA considers (at paragraphs 8.3.27 to 8.3.31) that Component 4 (Capital requirements) of the holistic balance sheet "*would bring the main element of Solvency II, which is designed to reflect the full magnitude of adverse outcomes, into the IORP Directive*".

Consequences of application of Solvency II capital requirements regime to IORPs

	EVCA considers that the application of the Solvency II capital requirements regime to pension funds within the scope of IORPs could have wide and damaging consequences to stakeholders for a number of important reasons. • EVCA considers that the Solvency II capital requirements regime, if applied to pension funds, would be likely to force pension trustees to alter investment strategy away from long-term growth assets to short-term, lower-returning assets. This would have two highly undesirable effects: firstly, it would diminish pension funds' ability to be appropriately funded to meet pension liabilities as they fall due; secondly, it would significantly reduce the supply of investment to SMEs with the resulting negative impact on employment and growth. Pension funds may be forced to stop investing in long-term asset classes, including private equity and venture capital funds, altogether and might even be forced to divest their existing portfolio at short notice considerably harming their future returns. • This in turn would reduce long-term investment in the European economy, such as research and development, plant and machinery and infrastructure. In a low interest environment it will also compound the challenge that pension fund managers face to invest in assets that will enable them to meet their liabilities under fixed return and defined benefit schemes[2]. • In addition to creating a perverse incentive for pension funds to attempt to meet long-term liabilities with short-term investments, it would increase risk from an investment strategy perspective: pension funds' risk exposure would increase as they are forced to adopt less well-diversified investment strategies. • A partial retreat of institutional investors from long-term or illiquid markets would also be felt	

[2] Fixed income strategies of insurance companies and pension funds, Committee on the Global Financial System, CGFS Papers No 44, July 2011, Bank of International Settlements (BIS).

	by the economy at large: there would be a structural shortage of investible capital for long-term or illiquid projects[3]. And this would be at a time when sovereign states are struggling to provide capital for these activities. • The problem occurs because under Solvency II solvency capital requirements ("SCR") are calibrated to correspond to the value at risk over a 12 month period (discussed below). As a consequence, much of the focus is on the liquidity of investments rather than the capital at risk. For example, a short dated BBB rated bond requires less capital than a longer term AAA rated bond under Solvency II. • Another flaw in the Solvency II approach with regards to investment in private equity and venture capital funds is that it assumes investment in a single private equity fund. Investment activity of pension funds is always based on investing in a portfolio of funds diversified by investment stages, geographies and vintage years. This leads to a considerably lower risk profile of the portfolio as a whole compared to that of each single fund. • Applying capital adequacy-based regulation would be likely to cause systemic risk to increase, not decrease. This is because the stabilising role of long-term investors in global financial markets would be undermined[4]. Pension funds covered by the IORP Directive manage assets of €2,500bn. To comply with Solvency II they would be required to hold extra assets worth €1,000bn. The Bank of International Settlements ("BIS") envisages a sale of equity instruments given their new capital weight (39% for global equities/49% for other equities such as private equity). This could trigger a reduction of about 5% of total assets invested in European shares. This translates into a €750bn loss to European stock markets[5].	

[3] Ibid.
[4] Ibid.
[5] Dick Sluimers, Chairman, APG, Financial Times, July 17th 2011.

- Exaggerated risk-weightings for private equity investments may force pension funds to sell considerable parts of their private equity portfolios resulting value devastation for the pension funds and their members: Similar reactions were observed in the banking landscape over the last two years. Since stricter regulation forced banks to sell their private equity portfolios, they destroyed enormous values for their shareholders. Market experts estimate that the volume of portfolio sales from banks have reached around EUR 20bn over the last years. Assuming a market discount of 15% to 20% would result in a value erosion of €3bn to €4bn. Copying this into pension schemes would bring an enormous loss risk potential for future pensioners while additionally the upside potential would be given away.

- Additional solvency rules would also raise the cost of retirement provision to both employers and employees.

    - This would be highly likely to exacerbate the current movement to fewer defined benefit schemes being offered by employers and the closure of existing schemes to new entrants.[6] Defined benefit schemes, while guaranteeing a secure income for millions of Europe's pensioners, are also an important source of capital for long-term asset classes such as private equity and infrastructure, which in turn generate income for pensioners. This virtuous circle of wealth creation would rapidly disintegrate.

    - In addition, rising cost of pension provision strain the solvency of the employer company backing the scheme leading to financing problems for the employer company. Such companies become less attractive for investors, including private equity, looking for companies with growth potential, including private equity funds. Increasing the cost of providing pension schemes will make it less attractive for employers to provide defined benefit schemes to their employees.

[6] Letter to Michel Barnier, EU Commissioner, internal Market and Services, from ETUC/ CES/ Business Europe, European Federation for Retirement Provision.

- Applying the Solvency II capital adequacy regime to pension funds is out of balance with much of the European Commission's stated ambitions for financing SMEs and venture capital. The European Commission is committed to making *"an efficient European venture capital market a reality"*[7]. This ambition will be severely undermined if IORPs can not invest in private equity. The impact of applying the Solvency II capital adequacy regime would be highly likely to cause pension funds under the IORP Directive to withdraw entirely from supporting enterprise investment via private equity funds, not just reduce the level of investment.

- Pension funds under the current IORP Directive cover 25% of the working EU population. Reducing these funds' ability, through long-term investment, to meet their current and future liabilities is a significant disconnect with EU ambitions to ensure adequate incomes in retirement. The European Commission is committed *"not to penalise the system"*[8].

Protecting the virtuous relationship between long-term growth asset classes such as private equity and infrastructure and their ability to help meet the long-term liabilities of pension funds is therefore crucial not only for pension funds and their members but also the wider economy.

<u>Risk measurement of private equity market risk</u>

EVCA considers that the approach to modelling private equity market risks under Solvency II is fundamentally flawed. The standard model is calibrated to the one-year 99.5% VaR level for both "global" and "other" equity. Private equity is assigned to the "other" equity category risk measurement of private equity is based on a listed private equity index, the LPX50.

[7] Communication from the Commission "EUROPE 2020 A strategy for smart, sustainable and inclusive growth", 3 March 2010.

[8] Speech by Michel Barnier, EU Commissioner, internal Market and Services 24 January 2011, "Occupational pensions in the Netherlands".

	This approach is generally flawed for illiquid, long-term, non-tradable assets, such as investments in closed-end funds like private equity and venture capital funds as well as traditional real-estate and infrastructure funds: market risks are of subordinate importance to investors compared to the risks of financing the capital contributions to be made to these funds and the unpredictability of proceeds received from these funds. In almost all closed-end funds the capital employed by the fund is drawn down on an as needed basis. An investor's return is generally generated when the underlying investments made by the fund are realized and proceeds distributed back to the investor. An investor's return is not generally achieved by selling their participation in the fund. For the reasons set out below, the use of the LPX50 index and the correlation factor used to aggregate "other" equities and alternative investments and calculate the requirements for private equity risks appear discriminatory and irrelevant, resulting in a flawed risk weighting for private equity. • Institutional investing in private equity is predominantly through unlisted funds that have a contractual lifetime of 10 years and follow a very distinct lifecycle. In such cases it is meaningless to view risk as the volatility of a time series over short horizons. • The LPX50 index does not reflect the universe of PE funds that pension funds would invest in to gain exposure to private equity and venture capital funds. It is unlikely that any of the funds a pension fund would invest in as part of their private equity portfolio is included in the LPX50. Moreover, where pension funds invest in a fund which is included in the LPX50 then such investments would be most likely to be held in the pension fund's public equity portfolio and NOT in its private equity portfolio. • Whereas institutional investors in private equity are typically long-term oriented and have the intention and ability to hold onto their positions over the full lifetime of the funds, publicly quoted private equity vehicles are specifically set up to attract the wider public to this asset class and they therefore basically display the same characteristics as public stocks. Share	

price developments are not necessarily driven by the performance of the underlying investments, but are rather a function of market sentiment. For publicly quoted private equity as typically second-line stocks (i.e. stocks with thin market capitalization or low frequency of trading), the lack of liquidity is priced into the market, the thin market results in high bid-ask spreads, often extreme discounts and price movements. As a consequence, the LPX 50 is in no way neither a representative nor a suitable yardstick for the risks institutional private equity investors incur.

- A more appropriate measurement would, for example, be to take the standard deviation relative to private equity funds' average returns. Taking this perspective, an independent study undertaken by Weidig and Mathonet specifically looked at the risk profile of diversified portfolios of private equity funds and found that a direct investment has a 30% probability of total loss, a fund or a portfolio of direct investments has a very small probability of total loss, and a portfolio of funds has a small probability of any loss[9]. According to their results, the maximum diversification benefit is sufficiently reached with a portfolio of between twenty and thirty funds. These results have been empirically confirmed over the past years, also through difficult market cycles.

- Private equity funds with their low liquidity require, in the eyes of most industry practitioners, a risk analysis which is closer to that which accompanies the assessment of default risk rather than market risk. Indeed, "rating" approaches where private equity funds are grouped into categories associated with growth expectations are widely used in the industry.

EVCA would be happy to provide further information and analysis on this subject and would welcome the opportunity to engage in a modelling discussion with EIOPA to avoid reaching a misguided view based on wrong assumptions on the risks inherent in this asset class with far reaching implications

[9] Weigig, T. & Mathonet, P-Y (2004) *The Risk Profile of Private Equity.* January: http://ssrn.com/abstract=495482

	for an important part of Europe's innovation and economic system.	
	9. CfA 5: Valuation of assets, liabilities and technical provisions	
13.	**Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?** EVCA agrees with EIOPA that assets should be valued on a market consistent basis. However, EVCA stresses that a market-consistent basis should not be limited to "mark-to-market" valuation as this will not always be appropriate. IORPs are long-term investors and their long-term investment horizon means they are able to invest in more illiquid growth assets such as private equity investments. For such investments mark-to-market valuations are not always possible and not meaningful. Therefore, EVCA urges EIOPA to expressly recognise that market consistent valuations encompass the "fair value" valuation methods consistently applied in the private equity fund sector and laid down in the IPEV guidelines in order for such valuation methods not to be detrimental to the financing of European non-listed companies. EVCA has outlined its opposition to the application of the Solvency II regime to IORPs under question 12 above and expressly wishes to cross-reference to those statements. The unsuitability of such application has in particular to be attributed to the short-sighted and pro-cyclical consequences of the “fire sale” concept underlying the mark-to-market approach.	
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	10. CfA 6: Security mechanisms	
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	11. CfA 7: Investment rules	
47.	**Do stakeholders believe that the prudent person principle is a sufficient basis for the investment of IORPs or is additional provision needed?** EVCA believes that the "prudent person principle" is a sufficient basis for the investment of IORPs. The prudent person principle results in an optimal outcome through the establishment of a portfolio of investments which is consistent with the specific objectives of the IORP, taking into account the nature and duration of its specific future liabilities. The prudent person principle applied to the investment portfolio as a whole mitigates serious flaws of the Solvency II regime: It allows for an appropriate calibration of the maturity of the investments with a view to meet IORPs long-term and predictable liabilities instead of forcing IORPs to adopt short-term investment strategies. Further, it allows for an appropriate measurement of the investment risks for each investment category instead of applying unsuitable criteria. If a capital adequacy based regulation were to be applied to pension funds such a regime would also need to provide for the development of internal models that have the potential of adequately mirroring the risks of the portfolio as a whole. EVCA is actively involved in the development of guidelines to measure the risk of private equity fund investments appropriately and is happy to discuss the approach taken in the guidelines with EIOPA. However, it seems unlikely that the 140,000 IORPs covered by the IORP Directive will be in a position, or will plan, to develop internal models. Therefore, it is important that the standard approach provides them with the ability to measure their risks appropriately. **General penalisation of long-term investments** The problem occurs because under Solvency II solvency capital requirements ("SCR") are calibrated	

to correspond to the value at risk over a 12 month period (discussed below). As a consequence, much of the focus is on the liquidity of investments rather than the capital at risk. For example, a short dated BBB rated bond requires less capital than a longer term AAA rated bond under Solvency II.

Applying capital adequacy-based regulation would be likely to cause systemic risk to increase, not decrease. This is because the stabilising role of long-term investors in global financial markets would be undermined[10]. Pension funds covered by the IORP Directive manage assets of €2,500bn. To comply with Solvency II they would be required to hold extra assets worth €1,000bn. The Bank of International Settlements ("BIS") envisages a sale of equity instruments given their new capital weight (39% for global equities/49% for other equities such as private equity). This could trigger a reduction of about 5% of total assets invested in European shares. This translates into a €750bn loss to European stock markets[11].

Risk measurement of private equity market risk

EVCA considers that the approach to modelling private equity market risks under Solvency II is fundamentally flawed. The standard model is calibrated to the one-year 99.5% VaR level for both "global" and "other" equity. Private equity is assigned to the "other" equity category risk measurement of private equity is based on a listed private equity index, the LPX50.

This approach is generally flawed for illiquid, long-term, non-tradable assets, such as investments in closed-end funds like private equity and venture capital funds as well as traditional real-estate funds: market risks are of subordinate importance to investors in such funds to the risks of financing the capital contributions to be made to these funds and the unpredictability of proceeds received from these funds. In almost all closed-end funds the capital employed by the fund is drawn down on an as needed basis. An investor’s return is generally generated when the underlying investments made by the fund are realized and proceeds distributed back to the investor. An investor’s return is not

[10] Ibid.
[11] Dick Sluimers, Chairman, APG, Financial Times, July 17th 2011.

generally achieved by selling their participation in the fund.

For the reasons set out below, the use of the LPX50 index and the correlation factor used to aggregate "other" equities and alternative investments and calculate the requirements for private equity risks appear discriminatory and irrelevant, resulting in a flawed risk weighting for private equity.

- Institutional investing in private equity is predominantly through unlisted funds that have a contractual lifetime of 10 years and follow a very distinct lifecycle. In such cases it is meaningless to view risk as the volatility of a time series over short horizons.

- The LPX50 index does not reflect the universe of PE funds that pension funds would invest in to gain exposure to private equity and venture capital funds. It is unlikely that any of the funds a pension fund would invest in as part of their private equity portfolio is included in the LPX50. Moreover, where pension funds invest in a fund which is included in the LPX50 then such investments would be mostly to be held in the pension fund's public equity portfolio and NOT in its private equity portfolio.

- Whereas institutional investors in private equity are typically long-term oriented and have the intention and ability to hold onto their positions over the full lifetime of the funds, publicly quoted private equity vehicles are specifically set up to attract the wider public to this asset class and they therefore basically display the same characteristics as public stocks. Share price developments are not necessarily driven by the performance of the underlying investments, but are rather a function of market sentiment. For publicly quoted private equity as typically second-line stocks (i.e. stocks with thin market capitalization or low frequency of trading), the lack of liquidity is priced into the market, the thin market results in high bid-ask spreads, often extreme discounts and price movements. As a consequence, the LPX 50 is in no way neither a representative nor a suitable yardstick for the risks institutional private

	equity investors incur. • A more appropriate measurement would, for example, be to take the standard deviation relative to private equity funds' average returns. Taking this perspective, an independent study undertaken by Weidig and Mathonet specifically looked at the risk profile of diversified portfolios of private equity funds and found that a direct investment has a 30% probability of total loss, a fund or a portfolio of direct investments has a very small probability of total loss, and a portfolio of funds has a small probability of any loss[12]. According to their results, the maximum diversification benefit is sufficiently reached with a portfolio of between twenty and thirty funds. These results have been empirically confirmed over the past years, also through difficult market cycles. • Private equity funds with their low liquidity require, in the eyes of most industry practitioners, a risk analysis which is closer to that which accompanies the assessment of default risk rather than market risk. Indeed, "rating" approaches where private equity funds are grouped into categories associated with growth expectations are widely used in the industry. EVCA would be happy to provide further information and analysis on this subject and urges EIOPA to engage in a modelling discussion with the private equity industry to avoid reaching a misguided view based on wrong assumptions on the risks inherent in this asset class with far reaching implications for an important part of Europe's innovation and economic system.	
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?**	

[12] Weigig, T. & Mathonet, P-Y (2004) *The Risk Profile of Private Equity.* January: http://ssrn.com/abstract=495482

	EVCA does not believe that Member States and host Member States should have the option to impose limitations on investments in addition to those set out in the IORP Directive. Investment policies differ from IORP to IORP due to their different liability profiles. Due to the optional and mandatory qualitative restrictions imposed IORPs may be unable to establish their investment portfolio in an optimal way to match their retirement objective and risk management. This is generally undesirable. EVCA supports the objective of harmonised investment rules in all Member States based on the prudent person principle only. This would have the advantage of simplifying the regulations on investment rules which, in turn, would lower compliance costs for IORPs and, ultimately, their members. It would make it easier for IORPs to operate cross-border as there would not be a range of investment rules to comply with which would also, in turn, increase their cost-effectiveness for members.	
49.	**To what extent do stakeholders believe the investment provisions of the Directive should differ between defined benefit and defined contribution pensions?** The general shift towards defined contribution schemes also shifts the responsibility for investment decisions from the professional institution to the private individual member of the pension scheme. While the ultimate liability of defined contribution schemes is not-defined, EVCA supports the application of the prudent person principle to the investment portfolio as a whole. This should also ensure that appropriate investment decision making bodies, processes and systems can be put in place for defined contribution schemes to enable allocations to long-term, growth orientated asset classes. In addition if liquidity is viewed as the only relevant measure of safety, new generations of pensioners will be denied the opportunity to benefit from long-term, growth-orientated asset classes.	
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?** EVCA's comments on the analysis of the options are as follows. EVCA broadly welcomes the proposals to clarify the Article 18 investment rules. However, EVCA notes	

that no measures have been put forward to clarify the apparent contradiction inherent in Article 18(1)(b), which requires that "*assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole*". EVCA notes that it may be difficult, if not impossible, for these goals to be given equal simultaneous precedence. For example, it is likely to be entirely appropriate for pension trustees to invest in assets which do not offer short-term liquidity but which do provide longer-term profitability, such as private equity. EVCA therefore suggests that Article 18(1)(b) to be amended, for example to read "*assets shall be invested in such a manner as to ensure <u>an appropriate balance in</u> the security, quality, liquidity and profitability of the portfolio as a whole*".

<u>7.1 Specific Call for Advice</u>

<u>The material elements of Article 132(2) of Directive 2009/138/EC that should be amended or removed to adequately address the specificities of IORPs in relation to risk assessments;</u>

As noted by EIOPA, Article 132(2) sub-paragraph 2 of SII contains the sentence, *"In addition the localization of those assets shall be such as to ensure their availability."* The current IORP Directive does not contain a provision on the localization.

EIOPA's options 2 and 3 propose, inter alia, that the IORP Directive be changed to include the above sentence.

EVCA does not consider that such a change would be appropriate. In particular, EVCA considers that EIOPA should consider an additional negative factor relating to this part of options 2 and 3, namely that a primary requirement to ensure the "*availability*" of assets means that much of the focus is on the liquidity of investments rather than the capital at risk. This would be likely to force pension trustees to alter investment strategy away from illiquid long-term growth assets to short term liquid lower-returning assets. As discussed in the response to question 12 above, this would have a number of highly undesirable effects.

<u>7.3 Specific Call for Advice</u>

<u>The necessity from a prudential perspective to maintain Article 18(5) first and second sub-</u>

paragraphs of the IORP Directive enabling Member States to lay down more detailed investment rules;

EVCA supports EIOPA's option 2, namely: "*Delete Article 18(5) first and second sub-paragraphs of the IORP Directive for all IORPs (which would make CfA 7.4, 7.5 and 7.7 irrelevant)*".

EVCA agrees that the positive impact of this would be to create a level playing field for the investment rules in all Member States based on the prudent person principle only. EVCA supports the use of the prudent person principle. Option 2 would have the advantage of simplifying the regulations on investment rules for it would also make other provisions in Article 18 of the IORP-Directive redundant (those addressed in CfA 7.4, 7.5 and 7.7).

An additional positive impact resulting from option 2, expanding on those specifically identified by EIOPA, is that the deletion of Article 18(5) would make it easier for IORPs to operate cross-border as there would not be a range of investment rules to comply with.

7.7 Specific Call for Advice
The necessity from a prudential perspective to maintain Article 18(7) of the IORP Directive enabling, in the event of **cross-border activity**, the host Member States to require IORPs in the home Member State to comply with stricter investment rules as regards assets traded in regulated versus non-regulated markets, exposure to a single issuer or group and currency risk;

For the reasons given above, EVCA supports the deletion of Article 18(5) first and second sub-paragraphs of the IORP Directive for all IORPs, which would make CfA 7.4, 7.5 and 7.7 irrelevant.

7.8.3 Specific Call for Advice
The usefulness from a supervisory perspective of a Value-at-Risk type upper limit on the entire portfolio below which the supervisor may require the pension fund to take action (e.g. sell the riskiest assets).

EVCA supports EIOPA's conclusion that there is not prudential justification to introduce this approach at European level, for the reasons given by EIOPA. In particular, VaR measure is short-term; its relevance is poor for the types of long-term investments, including private equity and venture

	capital, that pension funds should pursue. Private equity and venture capital investments are examples where it may be misleading to assess risk using a short-term VaR measure. VaR limits would therefore be a disincentive to investment in private equity and venture capital, despite these being the ones that many IORPs consider most appropriate in a long-term perspective.	
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	12. CfA 8: Objectives and pro-cyclicality	
52.	**What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour?** IORPs have a long-term investment policy calibrated to match their long-term liabilities. This contributes to stability on global financial markets. EVCA deems the ability to take a long-term view in setting investment strategy is extremely valuable and necessary to preserve. Therefore, EVCA advises EIOPA (i) to request that a revised IORP Directive should uphold IORPs ability to set a long-term investment policy and (ii) to request a thorough impact assessment of the macro-economic effects of a revision of the IORP Directive.	
	13. Governance and other qualitative requirements **14. CfA 9: General principles of supervision, scope and transparency and accountability**	
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	15. CfA 10: General supervisory powers	
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	16. CfA 11: Supervisory review process and capital add-ons	
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	17. CfA 12: Supervision of outsourced functions and activities	
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	18. CfA 13: General governance requirements	
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	19. CfA 14: Fit and proper	
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	20. CfA 15: Risk management	
68.	**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?** With regard to any legal prescription of risk management principles for IORPs, EVCA expresses its concerns that the practical implementation of risk management principles that are solely focused on liquidity and disregard the fact that different asset classes require different risks to be considered would adversely affect the ability of IORPs to invest in long-term non-liquid investments, such as private equity or infrastructure investment funds. IORPs do not require short-termist risk management as their liabilities are long-term and predictable over time.	

	Risk management provisions applicable to IORP funds should take into account risk management requirement already imposed by the AIFM Directive to the PE/VC funds in which they invest.	
	21. CfA 16: Own risk and solvency assessment	
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	22. CfA 17: Internal control system	
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	23. CfA 18: Internal audit	
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	24. CfA 19: Actuarial function	
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	25. CfA 20: Outsourcing	
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	26. CfA 21: Custodian / depository	
83.	**What is the view of the stakeholders on the proposed treatment of depositaries?**	

	EVCA wishes to comment that any provisions regarding the custody functions of a depositary should take into account the common understanding reached in the process of drafting the AIFMD that certain assets cannot be held in custody (cf. Art. 21 para. (3) sub-para. (3), para. (8) AIFMD). As ESMA has rightly pointed out such assets include in particular "investments in privately held companies and interests in partnerships" (ESMAs final report on implementing measures of the AIFMD, dated 16 November 2011, ESMA/2011/379, page 158, explanatory notes after Box 79, para. 18, last bullet point).	
84.		
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?** EVCA wishes to comment that any provisions regarding the custody functions of a depositary should take into account the common understanding reached in the process of drafting the AIFMD that certain assets cannot be held in custody (cf. Art. 21 para. (3) sub-para. (3), para. (8) AIFMD). As ESMA has rightly pointed out such assets include in particular "investments in privately held companies and interests in partnerships" (ESMAs final report on implementing measures of the AIFMD, dated 16 November 2011, ESMA/2011/379, page 158, explanatory notes after Box 79, para. 18, last bullet point).	
86.		
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	27. Disclosure requirements **28. CfA 22 Information to supervisors**	
89.	**Do stakeholders agree with the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?**	

	EVCA supports EIOPA' advice for a convergent approach on reporting to supervisors among the various Member States, in order to avoid competition distortions. In addition, EVCA wishes to point out that reporting obligations on IORPs should not result in confidential information relating to underlying assets, in particular non-listed companies, to be disclosed.	
90.		
	29. CfA 23: Information to members / beneficiaries	
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