

**Eversheds LLP's comments on
consultation paper on Further Work on Solvency of IORPs**

**Deadline
13 January 2015
23:59 CET**

Name of Company:	Eversheds LLP	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment/response in the relevant row. If you have <u>no response</u> to a question, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments/responses which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-040@eiopa.europa.eu . Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions refers to Consultation Paper on Further Work on Solvency of IORPs.</p>		
Reference	Comment	
General Comment	<p>Eversheds supports EIOPA's aims of having objective and transparent assessment of the financial security of IORPs and the sound management of risks. We agree that these should be achieved in a manner that recognises the specificities of pension schemes throughout the EU.</p> <p>However, Eversheds does not support the Holistic Balance Sheet as the means of achieving these ambitions, on the basis that we think that it should be left to Member States to develop a robust system of risk management and protection for IORPS, which is suited to the specificities of IORPs within the relevant Member State. Several Member States, such as the UK and the Netherlands, already have robust risk management and protection systems for IORPs in place and, rather than attempting to introduce a new regime,</p>	

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EIOPA's focus should be on ensuring that those Member States that do not currently have sufficiently robust systems in place take action to address this.

Given the diversity of the 28 different pension systems within the EU and of the vast array of different IORPs throughout the EU, we do not think that a one-size-fits-all approach is appropriate and, instead, in line with the doctrine of subsidiarity, we think that the prudential regulation of IORPs should be dealt with at Member State level.

In addition, EIOPA's own Quantitative Impact Study demonstrated that the original Holistic Balance Sheet proposal would (on the benchmark scenario) have increased the deficits of UK defined benefit schemes by £150 billion. This would overstate the extent of DB deficits in the UK (and similarly in other Member States) principally through the use of an unnecessarily exacting discount rate regime. This would be a very significant blow to the sustainability of DB schemes in the UK (and other Member States) and, in the UK, it would very likely force the closure of the remaining 14 per cent of such schemes that are still open to new members and the complete closure of many of the 50 per cent still open to further accrual by existing members.¹

Adding billion to the liabilities of IORPs within the EU and requiring sponsors to fund their schemes to this level would also have a significant economic impact. Funds would be diverted away from business investment which is likely to negatively impact growth and jobs at a time when Europe needs to do all that it can to promote economic growth and employment. Indeed these are two key priorities identified by Jean-Claude Juncker for the new European Commission.

In addition, one of the most welcome EU developments in recent months has been the European Commission's increased emphasis on long-term investment, not least in the €315 billion investment package unveiled by President Juncker on 26 November 2014. However, the European Central Bank has warned that a holistic balance sheet-based regulatory regime could undermine investment in growth assets and push more investment towards low-risk bonds. This is a significant critique, directly relevant to

¹ DB scheme figures from NAPF *Annual Survey 2014*

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Europe's economic future.

These comments notwithstanding, we welcome the wider range of options and new flexibilities put forward in this consultation. We recognise that EIOPA has been willing to engage with stakeholders and has taken note of many of the concerns raised in previous consultation rounds.

Regarding the specific issues raised in this consultation, we consider that the following overall approach should be adopted:

- **Sponsor support.** It would be a mistake to try to put a single numerical value on sponsor support, as this is a complex concept that requires a rounded assessment to ensure IORPs fully understand the extent to which they can rely on a sponsor's backing and the risks associated with it. For this reason, the proposal to use sponsor support as a 'balancing item', as proposed in para 4.112, is a welcome improvement on previous versions of the proposed holistic balance sheet. We also welcome the proposal that a principles-based approach should be adopted with regards to the valuation of sponsor support with the specifics of this being developed at a national level and/or by individual IORPs themselves.
- **Non legally enforceable sponsor support.** We do not think that non-legally enforceable sponsor support should be included on the holistic balance sheet on the basis that the prospect of such support being provided to the scheme in the future is too uncertain and, therefore, it would be imprudent for IORPs to rely upon such support in assessing their solvency.
- **Pension protection schemes** - We do not think that pension protection schemes should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such schemes having to be used. Recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to need to use such schemes. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that pension protection schemes will need to be used. Recognising pension protection schemes on the

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holistic balance sheet would also be inconsistent with UK case law.

- **Benefit reduction mechanisms.** We do not think that benefit reduction mechanisms should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such mechanisms having to be used. Recognising benefit reduction mechanisms on the holistic balance sheet implies that IORPs are expected to use such mechanisms. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that such mechanisms will need to be used.
- **Supervisory responses.** If EIOPA and the European Commission were to insist on pressing ahead with the Holistic Balance Sheet (contrary to our views), then the best option would be use as a risk management tool (i.e. Example 6). Example 1 would have a devastating impact on the European economy.
- **Transition period.** It is essential to have an appropriate transitional period between the entry into force of any legislation on the holistic balance sheet and practical implementation as a funding regime to enable IORPs and sponsors to prepare for this. We would propose a transitional period of at least 10 to 15 years or perhaps even 25 years as this would reflect the time by which most IORPs in the UK are aiming to be self sufficient.
- **Future accruals only.** We support the option of applying the holistic balance sheet to future accruals only which is put forward in the consultation paper.

EIOPA should also note that compiling the Holistic Balance Sheet will be a significant new task for IORPs, with considerable costs attached.

About Eversheds LLP

We have the largest team of pensions lawyers in the UK. Our clients include IORPs, sponsors, insurers and Government departments. Eversheds is also a member of

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	<p>PensionsEurope and has pension lawyers working throughout the EU.</p> <p>Our response represents our own views on the issues raised in this consultation paper and not those of our individual clients. However, in forming our views we have taken account of our clients' interests and concerns.</p> <p>If you have any queries in relation to any of the points raised in our response please contact Tim Smith on 0845 497 4650 or by email at timsmith@eversheds.com.</p>	
Q1	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that the concept of 'contract boundaries' works well for IORPs – as the consultation paper comes close to recognising in para 4.22 - given the fundamental differences between insurance contracts and the promises made by IORPs to their members (e.g. the fact that insured liabilities end when the contract comes to an end, whereas the liabilities of IORPs, certainly in the UK, do not come to an end but remain with the IORP until the individual and their survivors die or those liabilities are legally transferred to another undertaking). In light of this, we think that a different expression needs to be used in the context of IORPs.</p>	
Q2	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>No. The concept of 'contract boundaries' does not work well for IORPs – as the consultation paper comes close to recognising in para 4.22 - given the fundamental differences between insurance contracts and the promises made by IORPs to their members (e.g. the fact that insured liabilities end when the contract comes to an end, whereas the liabilities of IORPs, certainly in the UK, do not come to an end but remain with</p>	

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	the IORP until the individual and their survivors die or those liabilities are legally transferred to another undertaking). In light of this, we think that a different expression needs to be used in the context of IORPs.	
Q3	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In the context of UK IORPs we think in terms of to what has been “promised” by the IORP to the member and/or the liabilities of the IORP rather than referring to a contract between the IORP and the member. Therefore, an expression like “Extent of Promise” or “Extent of liability” would be more suitable to use in the context of IORPs.</p>	
Q4	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In the UK, the right to terminate an IORP in respect of the future accrual of benefits may rest with the sponsoring employer or with the sponsor and the IORP, so the issues raised in para 4.28 regarding the right to ‘stop’ or modify the promise are complex.</p> <p>It should also be noted that, in the UK, Section 67 of the Pensions Act 1995 protects accrued rights, so these cannot be modified or taken away by either the sponsor or IORP.</p> <p>In addition, we query the extent to which the ability to stop the promise to provide benefits (by which we mean the ability to avoid liabilities that have already accrued as opposed to stopping the accrual of future liabilities) or to reduce the amount of those benefits should be reflected in the Holistic Balance Sheet, given that in our view, the purpose of a prudential funding regime should be to seek to ensure that promises are met not to implicitly provide that it is ok for IORPs to reduce or avoid those promises.</p>	

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<p>Q5</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We query the extent to which the ability to stop the promise to provide benefits (by which we mean the ability to avoid liabilities that have already accrued as opposed to stopping the accrual of future liabilities) or to reduce the amount of those benefits should be reflected in the Holistic Balance Sheet, given that in our view, the purpose of a prudential funding regime should be to seek to ensure that promises are met not to implicitly provide that it is ok for IORPs to reduce or avoid those promises.</p> <p>In the UK context, the right to terminate an IORP may rest with the sponsoring employer or with the sponsor and scheme, so the issues raised in para 4.28 regarding the right to 'stop' or modify the promise are complex.</p> <p>It should also be noted that, in the UK, Section 67 of the Pensions Act 1995 protects accrued rights, so these cannot be modified or taken away by either the sponsor or IORP.</p> <p>In addition, there is a risk that, by incorporating the elements listed above in a definition of contract boundaries, the EU could unwittingly create a conflict between EU legislation and national provisions, such as the Pension Protection Fund or the protection for accrued rights under Section 67 in the UK.</p>	
<p>Q6</p>		
<p>Q7</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p>	

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	Yes, we think that this is an important distinction.	
Q8	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes.</p>	
Q9	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds' considers that the existence and availability of a surplus should be recognised somewhere on the holistic balance sheet to show that the IORP actually has more than enough assets to meet its liabilities. However, we think that a distinction needs to be drawn between an actual surplus which exists where an IORP has more assets than liabilities and a notional surplus which arises where the assets when added together with other elements on the "asset" side of the holistic balance sheet (such as sponsor support) exceeds the liabilities of the IORP. We think that the former is a situation where a return of surplus assets to the sponsor may be appropriate whereas the latter is not.</p> <p>In the UK there are statutory controls surrounding the ability of IORPs to make payments to the sponsor. The rules of the relevant scheme would also need to permit this. In practice, this means that the scope for payments from IORPs to sponsors in the UK is very limited, not least because they also frequently involve complex tax charges.</p>	
Q10	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p>	

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	<p>In the UK, the obligations under defined benefit schemes arise as a result of an individual's active membership of the scheme and ongoing service with the employer. In the vast majority of cases individual members are required to contribute in order to remain in active membership and accrue benefits. However, there may be some limited cases where this is not the case. In those cases the sponsor would be responsible for funding those benefits. However, the members rights would accrue regardless of whether the sponsor paid its contributions into the scheme.</p> <p>In any event, under a defined benefit scheme in the UK it is generally understood that benefits accrue by reference to service with the employer/scheme membership rather than contributions.</p>	
Q11	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In principle, yes, and we think that it is crucial to develop a concept equivalent to that of “contract boundaries” which is appropriate for the promises made by IORPs, albeit that we think a different expression should be used in the context of IORPs to describe this.</p>	
Q12	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In the UK, the obligations under DB schemes arise as a result of an individual's membership of the scheme and ongoing service with the employer. Therefore, focusing on contributions to determine the technical provisions for a DB scheme is not appropriate.</p> <p>In addition, we query the extent to which the ability to adjust benefits should be reflected in the Holistic Balance Sheet, given that in our view, the purpose of a prudential funding regime should be to seek to ensure that promises are met not to implicitly provide that</p>	

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	IORPs are expected to reduce or avoid those promises.	
Q13	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that pure discretionary benefits should not have to be reflected on the holistic balance sheet and we think that it should be left to Member States to decide how mixed benefits should be treated on the holistic balance sheet.</p>	
Q14	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds would agree with this position, although it would be unusual in the UK for there to be cash-flows that do not relate to risks building up in the IORP.</p> <p>Referring to cash flows may be appropriate for DC schemes. But we are confused by the references to cash flows building up within an IORP in the context of defined benefit schemes because, in the UK, we tend to think of liabilities building up within such IORPs rather than cash flows. In addition, the term “technical provisions” in the UK is understood to mean liabilities. Therefore, we think that, in the context of IORPs that provide defined benefits it would be more appropriate to refer to liabilities building up within the IORP rather than cash flows.</p> <p>That said, we agree that liabilities/cash flows should be recognised where they lead to risks building up within the IORP except for pure discretionary benefits. Whether or not mixed benefits should be recognised should be left for Member States and/or national regulators to decide.</p> <p>We are not clear on what is meant by the term “avoided” in this question. However, we</p>	

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	<p>presume that it means that future liabilities (i.e. those accruing after the valuation date) should not be included where the IORP or sponsor has a unilateral right which would enable it to prevent these liabilities accruing. Assuming this is the case, we are not clear on the purpose of including future liabilities in the holistic balance sheet, in any event, on the basis that so much uncertainty surrounds them.</p> <p>In the UK, pension scheme valuations focus on the extent to which accrued rights are covered by existing assets rather than trying to put a value on uncertain future benefits. The value of future benefits are considered when agreeing future contributions with the sponsor in order to seek to ensure that the future sponsor and member contributions will cover the cost of future benefit accrual.</p> <p>In our view, including future liabilities in the holistic balance sheet, certainly in a UK context, would introduce added uncertainty which would make the holistic balance sheet less meaningful and we think that it should, therefore, focus on accrued liabilities only. If this approach is not appropriate for all Member States, we suggest that this is something that should be left for national regulators to determine.</p>	
Q15		
Q16		
Q17	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>No, we do not think that the definition is appropriate on the basis that we think that the Holistic Balance Sheet should focus on accrued rights and not future liabilities (i.e. those accruing after the valuation date), the value of which will by their very nature be uncertain. In our view, including future liabilities in the holistic balance sheet, certainly in a UK context (where actuarial valuations currently focus on accrued liabilities only), would introduce added uncertainty which would make the holistic balance sheet less meaningful.</p>	

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If this approach is not appropriate for all Member States, we suggest that this is something that should be left for national regulators to determine.

If EIOPA decides to stick with the approach outlined in 4.46 of the consultation paper, notwithstanding our comments above, there are a number of issues that would need to be addressed, including:

(i) in the UK it is not common for an IORP to have a unilateral right to terminate the agreement with the sponsor and/or members, to reject future contributions or to amend contributions or benefits except in extremis. Therefore, paragraphs 2 a,b and c would not be appropriate in a UK context.

(ii) it may be difficult in some circumstances to determine the appropriate future date for the purposes of paragraphs 2 a, b and c. For example, would it need to take account of the time it would take to implement the changes and to consult with members?

(iii) the proposed definition of contract boundaries fails to take account of the fact that cash-flows relating to obligations may be terminated in other circumstances, such as a member deciding to leave the scheme or the death of a member. This means that if future liabilities are included in the holistic balance sheet, IORPs may materially overestimate those liabilities.

Q18

Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.

It is not clear to us exactly what 2a and 2b relate to or the circumstances in which they would apply (e.g. does 2a only relate to future obligations or does it relate to the termination of past and future obligations?). This needs to be clarified if the holistic balance sheet is developed further.

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Q19	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes, the proposed definition of contract boundaries fails to take account of the fact that cash-flows relating to future obligations may be terminated in other circumstances, such as a member deciding to leave the scheme or the death of a member. This means that if future liabilities are included in the holistic balance sheet, IORPs may materially overestimate those liabilities.</p>	
Q20	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In the UK we use technical provisions to refer to the liabilities of an IORP, so we are confused by the link between cash-flows and technical provisions drawn in the consultation paper. EIOPA needs to clarify this.</p>	
Q21	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>It is not clear to us exactly what 2a and 2b relate to or the circumstances in which they would apply (e.g. does 2a only relate to future obligations or does it relate to the termination of past and future obligations?). This needs to be clarified if the holistic balance sheet is developed further.</p>	
Q22	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension</i></p>	

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schemes.

In principle, we think that these are appropriate. However, following the recent High Court decision in the UK in *IBM UK v Dalglish & others*, in practice in the UK, even where sponsors clearly have a unilateral right to cease the future accrual of benefits under their scheme, it may be difficult to know when that right can be exercised. This, combined with the fact that very few IORPs in the UK will ever meet the conditions in paragraphs 2 a, b or c in the definitions of contract boundaries, means that these exceptions may be of no use to IORPs in the UK. This would mean that UK IORPs would need to include all potential future liabilities in their holistic balance sheet, even though in practice the IORP could be closed at a future date. This would create significant difficulties for UK pension schemes.

The problematic interaction between these proposals and UK case law illustrates the difficulty of trying to establish a single funding regime for the whole of Europe and, in our view, demonstrates the case for developing funding and regulatory regimes for IORPs at Member State level, where these Member State specific issues can be taken into account.

In any event, including future liabilities in the holistic balance sheet, certainly in a UK context, would introduce added uncertainty which would make the holistic balance sheet less meaningful and we think that it should, therefore, focus on accrued liabilities only. If this approach is not appropriate for all Member States, we suggest that this is something that should be left for national regulators to determine.

Q23

Q24

Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.

We think that the reference to implicit policies in mixed benefits is problematic because it introduces a great deal of uncertainty as, in practice, in most cases it will be very difficult to know for certain whether an implicit policy exists or not (i.e. when do historical

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	<p>decisions and communications become an implicit policy?).</p> <p>In light of this we think that it should be left to individual IORPs to decide whether mixed benefits should be included in the holistic balance sheet or not. Guidance could be developed by national regulators to guide this decision.</p>	
Q25		
Q26	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We cannot see how this could sensibly be done to produce a meaningful result.</p>	
Q27	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that pure discretionary benefits should be excluded from the holistic balance sheet or, alternatively, it should be left to individual IORPs to decide whether pure discretionary benefits should be included in the holistic balance sheet or not. Guidance could be developed by national regulators to guide this decision.</p> <p>If the latter approach is adopted and an IORP decides to include pure discretionary benefits, we think that a best estimate valuation should be placed on these but it should be left up to the IORP to decide how to calculate this.</p>	
Q28	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p>	

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	<p>We think that it should be left to individual IORPs to decide whether mixed benefits should be included in the holistic balance sheet or not. Guidance could be developed by national regulators to guide this decision.</p> <p>Where mixed benefits are included we think that a best estimate valuation should be placed on these, but it should be left up to the IORP to determine how to calculate this.</p>	
Q29	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>No. We do not think that non-legally enforceable sponsor support should be included on the holistic balance sheet on the basis that the prospect of such support being provided to the scheme in the future is too uncertain and, therefore, it would be imprudent for IORPs to rely upon such support in assessing their solvency.</p> <p>Regulatory guidance in the UK states that IORP should not rely upon non-legally binding sponsor support in assessing their solvency and so if EIOPA were to allow this to be recognised on the holistic balance sheet it would run counter to this.</p>	
Q30	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>It is not clear to us what is meant by “off-balance capital instruments” and so we are unable to comment on this. EIOPA needs to clarify what is meant by the term if it develops the holistic balance sheet further.</p> <p>Havning said that, we think that it is essential that contingent assets (such as group company guarantees, letters of credit and charges over property) are recognised on the holistic balance sheet if it is developed further. If these are not recognised under this heading they should be recognised elsewhere.</p>	

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Q31		
Q32	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes.</p>	
Q33		
Q34		
Q35	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that benefit reduction mechanisms should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such mechanisms having to be used.</p> <p>Recognising benefit reduction mechanisms on the holistic balance sheet implies that IORPs are expected to use such mechanisms. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that such mechanisms will need to be used.</p>	
Q36	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension</i></p>	

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	<p><i>schemes.</i></p> <p>Yes, we think that this is the best approach given the diversity of sponsors within different Member States.</p> <p>EIOPA should be commended for responding in this way to the concerns raised in previous rounds of consultation.</p> <p>At UK level, a principles-based approach would allow for the inclusion of contingent assets, which are an increasingly widely used means of providing additional security for the scheme.</p>	
Q37	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds is unable to give a clear answer to this question, as the consultation paper does not make clear what is meant by 'market-consistent'.</p> <p>A definition is given in para 4.106, but the meaning of 'market consistent' remains unclear.</p> <p>EIOPA needs to make clear what it means by a 'market consistent' valuation of sponsor support before developing the Holistic Balance Sheet project further.</p>	
Q38	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds is unable to give a clear answer to this question, as the consultation paper does not make clear what is meant by 'market-consistent'.</p> <p>A definition is given in para 4.106, but the meaning of 'market consistent' remains unclear.</p>	

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	<p>EIOPA ` needs to make clear what it means by a `market consistent' valuation of sponsor support before developing the Holistic Balance Sheet project further.</p>	
<p>Q39</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds supports the proposal of allowing sponsors that meet the `proportionality principle' criteria to use sponsor support as a balancing item. Where this applies, the complexity and cost involved in calculating the holistic balance sheet would be significantly reduced.</p> <p>Indeed, Eversheds would urge EIOPA to go further and allow the use of sponsor support as a balancing item to be the <i>default</i> approach for all IORPs unless those running the IORP decide otherwise.</p> <p>If EIOPA does not take this default approach, then the use of sponsor support as a balancing item is likely to be of greatest use to the larger schemes that have the resources to carry out the work required to demonstrate that they meet the criteria (as defined by Principles 1 to 3). Other schemes, however, would still face a very demanding task in valuing sponsor support. Given that these are likely to be the smaller schemes and/or schemes with weaker sponsors, it will be important to keep the process as simple and low-cost as possible.</p>	
<p>Q40</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>It should be left to national regulators to determine what conditions should be met in order</p>	

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	for sponsor support to be used as a balancing item.	
Q41	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>It should be left to national regulators to determine what conditions should be met in order for sponsor support to be used as a balancing item.</p>	
Q42	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Any value for M that is generally applied for all IORPs that use the balancing item approach would be arbitrary.</p>	
Q43	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that pension protection schemes should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such schemes having to be used. Recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to use such schemes. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that pension protection schemes will need to be used.</p> <p>In addition, in a UK context, the Courts have said that trustees of defined benefit schemes should ignore the existence of the pension protection fund when making decisions about</p>	

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	their scheme (including in relation to funding and investment). Recognising pension protection schemes on the holistic balance sheet would be inconsistent with this.	
Q44	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that pension protection schemes should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such schemes having to be used. Recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to need to use such schemes. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that pension protection schemes will need to be used.</p> <p>Recognising pension protection schemes on the holistic balance sheet would also be inconsistent with UK case law.</p>	
Q45	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that pension protection schemes should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such schemes having to be used. Recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to need to use such schemes.</p> <p>In addition, allowing IORPs to show the protection afforded by a pension protection scheme as an asset on the holistic balance sheet could distort the true solvency position of the IORP by suggesting that the solvency position is better than it actually is. In turn this</p>	

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	<p>may mean that appropriate action is not taken to address the IORPs actual solvency position which may in turn, perversely, make it more likely that the relevant pension protection scheme will need to be used.</p> <p>Recognising pension protection schemes on the holistic balance sheet would also be inconsistent with UK case law.</p>	
Q46	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes, Eversheds agrees that a principles-based, IORP-specific approach to valuation of sponsor support should form part of the Holistic Balance Sheet regime. The principles themselves should be high-level with the specifics left to national regulators to determine.</p> <p>However, this approach might not be suitable for all schemes, particularly, smaller IORPs given the cost that may be involved in developing an IORP specific approach. Therefore, we suggest that IORPs should be able to choose between adopting an IORP-specific approach or a prescribed approach.</p>	
Q47	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>This should be left for national regulators to decide.</p>	
Q48		
Q49		

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Q50		
Q51		
Q52		
Q53		
Q54		
Q55		
Q56		
Q57	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes, Eversheds agrees that a principles-based, IORP-specific approach to valuation of sponsor support should form part of the Holistic Balance Sheet regime. The principles themselves should be high-level with the specifics left to national regulators to determine. Any such principles should include the principle that IORPs should take into account the amount that they might stand to recover on a sponsor's insolvency where the insolvency of the sponsor is a realistic prospect in the short to medium term.</p> <p>However, this approach might not be suitable for all schemes, particularly, smaller IORPs due to the cost of developing an IORP specific approach. Therefore, we suggest that IORPs should be able to choose between adopting an IORP-specific approach or a prescribed approach.</p>	
Q58		

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Q59		
Q60	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>The options presented do appear to cover the full range of possibilities for estimating sponsor default probabilities.</p> <p>As the consultation notes, the UK's Pension Protection Fund has recently concluded an extensive exercise to develop a pensions-specific model for estimating sponsor default risk, with Experian providing the data underpinning the new system. It is widely agreed that the new system provides a closer link between the risks posed to the PPF by each scheme and the levy it pays.</p> <p>Eversheds would not want to see a further new method of estimating sponsor default risk developed alongside the new PPF system, and recommends that Member States are allowed to use existing systems where they already exist.</p>	
Q61	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds is surprised by the very simplistic nature of the paper's discussion of the timing of sponsor support. This is a complex topic that warrants far more detailed consideration.</p> <p>That said, we think that the appropriate time period over which to consider possible payments from sponsors needs to be a long period to reflect the long-term nature of pension promises.</p>	

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Q62	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>A scheme-specific approach is needed to take account of the wide variety of complex corporate structures.</p> <p>The consultation paper posits the idea of apportioning the value of maximum sponsor support across the relevant IORPs. It is not clear how this would be done in today's complex corporate environment. For example, in one major UK plc, the most 'senior' company within the group does not itself sponsor any IORPs at all. Would it really be appropriate to apportion any of its strength across IORPs that it does not sponsor?</p>	
Q63		
Q64	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>The approach suggested for the calculation of sponsor support for multi-employer IORPs might be suitable as an option for some IORPs, but for others it would be completely inappropriate.</p> <p>For example, in sectionalised schemes (i.e. where sponsors are only liable in respect of their section of the scheme) taking account of a sample of the five largest sponsors, as suggested in paragraph 4.230, would mean the strength of a particular sponsor being used to calculate support for a scheme even though there was no prospect of that sponsor actually supporting the scheme. As a result, sectionalised schemes should be treated as separate schemes when assessing the strength of sponsor support.</p> <p>Covenant assessment remains a complex matter, where assessing the sum of the parts is</p>	

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	far from an exact science. Therefore, the best approach would be to allow a scheme-specific approach to valuing sponsor support in multiple-employer schemes. A one-size-fits-all approach would not work.	
Q65	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Placing a value on sponsor support for multi-employer IORPs is a complex exercise, and such schemes have developed their own prudent methods that work well for their particular circumstances. Given this background, it seems ill-advised to devise a single methodology that would be applied to all multi-employer schemes. Therefore, the best approach, in our view, would be to allow a scheme-specific approach to valuing sponsor support in multiple-employer schemes.</p>	
Q66	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>In our view, it would be better for the value to be given to the guarantee to reflect the amount which the guarantor could be expected to pay under the guarantee if it were called upon to do so at the valuation date. This could then be aggregated with the value of the sponsor support provided by the actual sponsor. This is the approach adopted by the Pension Protection Fund in the UK in placing a value on guarantees when calculating a scheme's PPF levy.</p>	
Q67	<i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i>	

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	<p>The difficulty in this area, which has been extensively explored as part of the recent consultations on reform of the Pension Protection Fund levy, is that financial data is not as readily and publicly available as it is in the corporate sector. (The three-paragraph discussion in EIOPA's consultation paper, by contrast, is disappointingly superficial.)</p> <p>In the process of developing the new PPF levy, Experian have had to devise completely new systems based on data from diverse sources such as the UK Charity Commission and Higher Education Funding Council.</p> <p>Eversheds strongly encourages EIOPA to use this existing work rather than 're-inventing the wheel'.</p>	
Q68		
Q69	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that it is appropriate to include pension protection schemes on the holistic balance sheet on the basis that, in our view, one of the primary purposes of a solvency funding regime should be to prevent the need for IORPs to have to call upon pension protection schemes. In contrast recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to use such schemes.</p> <p>In addition, allowing IORPs to show the protection afforded by a pension protection scheme as an asset on the holistic balance sheet could distort the true solvency position of the IORP by suggesting that the solvency position is better than it actually is. In turn this may mean that appropriate action is not taken to address the IORPs actual solvency position which may in turn, perversely, make it more likely that the relevant pension protection scheme will need to be used.</p> <p>Recognising pension protection schemes on the holistic balance sheet would also be</p>	

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	<p>inconsistent with UK case law.</p> <p>Having said this, if EIOPA decides that it is appropriate to show pension protection schemes in the holistic balance sheet, we think that this should be shown as a separate item, so that the value attributable to this and the value attributed to the sponsor support are clear and transparent.</p>	
Q70	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that it is appropriate to include pension protection schemes on the holistic balance sheet on the basis that, in our view, one of the primary purposes of a solvency funding regime should be to prevent the need for IORPs to have to call upon pension protection schemes. In contrast recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to use such schemes.</p> <p>In addition, allowing IORPs to show the protection afforded by a pension protection scheme as an asset on the holistic balance sheet could distort the true solvency position of the IORP by suggesting that the solvency position is better than it actually is. In turn this may mean that appropriate action is not taken to address the IORPs actual solvency position which may in turn, perversely, make it more likely that the relevant pension protection scheme will need to be used.</p> <p>Recognising pension protection schemes on the holistic balance sheet would also be inconsistent with UK case law.</p> <p>However, if EIOPA decides that it is appropriate to show pension protection schemes in the holistic balance sheet, we think that this should be shown as a separate item, so that the value attributable to this and the value attributed to the sponsor support are clear and transparent.</p>	

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Q71

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Whilst the existence of pension protection schemes is clearly relevant when assessing the overall security of members' benefits, we do not think that they should be included as part of the holistic balance sheet on the basis that this could disguise the true solvency position of an IORP and undermine the credibility of the solvency regime. In addition, one of the primary purposes of a solvency funding regime should be to prevent the need for IORPs to have to call upon pension protection schemes. Recognising pension protection schemes as an asset on the holistic balance sheet would, in our view, run counter to this and implies that IORPs are expected to call upon such schemes.

In addition, allowing IORPs to show the protection afforded by a pension protection scheme as an asset on the holistic balance sheet could distort the true solvency position of the IORP by suggesting that the solvency position is better than it actually is. In turn this may mean that appropriate action is not taken to address the IORPs actual solvency position which may in turn, perversely, make it more likely that the relevant pension protection scheme will need to be used.

Recognising pension protection schemes on the holistic balance sheet would also be inconsistent with UK case law.

Q72

Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.

No, on the basis that we think that it should be left to Member States to develop a robust system of solvency, risk management and protection for IORPS, which is suited to the specificities of IORPs within their Member State. Several Member States, such as the UK and the Netherlands, already have robust risk management and protection systems in

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place for IORPs and, rather than attempting to introduce a new regime, EIOPA's focus should be on ensuring that those Member States that do not currently have sufficiently robust systems in place take action to address this.

Given the diversity of the 28 different pension systems within the EU and of the different IORPs within those systems, we do not think that a one-size-fits-all approach is appropriate and, instead, in light of the doctrine of subsidiarity we think that the prudential regulation of IORPs should be dealt with at Member State level.

In addition, EIOPA's own Quantitative Impact Study demonstrated that the original Holistic Balance Sheet proposal would (on the benchmark scenario) have increased the deficits of UK defined benefit schemes by £150 billion. This would overstate the extent of DB deficits in the UK (and similarly in other Member States) principally through the use of an unnecessarily exacting discount rate regime. This would be a very significant blow to the sustainability of DB schemes in the UK (and other Member States) and, in the UK, it would very likely force the closure of the remaining 14 per cent of such schemes that are still open to new members and the complete closure of many of the 50 per cent still open to further accrual by existing members.

Adding billion to the liabilities of IORPs within the EU and requiring sponsors to fund there schemes to this level would also have a significant economic impact. Funds would be diverted away from business investment which is likely to negatively impact growth and jobs at a time when Europe needs to do all that it can to promote economic growth and employment. Indeed these are two key priorities identified by Jean-Claude Juncker for the new European Commission.

In addition, one of the most welcome EU developments in recent months has been the European Commission's increased emphasis on long-term investment, not least in the €315 billion investment package unveiled by President Juncker on 26 November 2014. However, the European Central Bank has warned that a holistic balance sheet-based regulatory regime could undermine investment in growth assets and push more investment towards low-risk bonds. This is a significant critique, directly relevant to Europe's economic future.

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Q73	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>If EIOPA and the European Commission were to insist on pressing ahead with the Holistic Balance Sheet (contrary to our advice), then the best option would be to use it as a risk management tool (i.e. Example 6). It should be left to Member States to determine how this tool should then be used as part of their national pensions regulatory framework.</p>	
Q74	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>However, if the holistic balance sheet is used as a risk management tool as part of the pillar 2 requirements, we would support it being publically disclosed as part of the pillar 3 requirements.</p>	
Q75	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>However, if the holistic balance sheet is used as a risk management tool as part of the pillar 2 requirements, we think that it is essential that competent authorities in Member States are empowered to take supervisory action based upon it if appropriate action is not taken by the relevant IORP and/or sponsor.</p>	
Q76	<p>Eversheds cannot see any rationale for recognising non-legally enforceable sponsor support on the holistic balance sheet on the basis that the prospects of such support being providing to the IORP in the future or in the event that it is needed is too uncertain for reliance to be placed upon it in assessing an IORP's solvency.</p>	

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<p>Q77</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that it is appropriate to include pension protection schemes on the holistic balance sheet on the basis that, in our view, one of the primary purposes of a solvency funding regime should be to prevent the need for IORPs to have to call upon pension protection schemes. In contrast recognising pension protection schemes on the holistic balance sheet implies that IORPs are expected to use such schemes.</p> <p>In addition, allowing IORPs to show the protection afforded by a pension protection scheme as an asset on the holistic balance sheet could distort the true solvency position of the IORP by suggesting that the solvency position is better than it actually is. In turn this may mean that appropriate action is not taken to address the actual shortfall in the IORP's funding.</p>	
<p>Q78</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes, Eversheds would agree with this approach.</p>	
<p>Q79</p>	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds would favour option 3 – allowing country-specific decisions on the treatment of mixed benefits - on the basis that a policy can be developed at a national level which takes into account the IORPs within that Member State and the national pensions system.</p>	

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Q80	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We do not think that benefit reduction mechanisms should be recognised on the holistic balance sheet on the basis that, in our view, the purpose of a prudential funding and regulatory regime is to avoid such mechanisms having to be used.</p> <p>Recognising benefit reduction mechanisms on the holistic balance sheet implies that IORPs are expected to use such mechanisms. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that such mechanisms will need to be used.</p>	
Q81	<p>The option of not recognising benefit reduction mechanisms on the holistic balance sheet should be considered. We do not think that benefit reduction mechanisms should be recognised on the holistic balance sheet on the basis that in our view, the purpose of a prudential funding and regulatory regime is to avoid such mechanisms having to be used.</p> <p>Recognising benefit reduction mechanisms on the holistic balance sheet implies that IORPs are expected to use such mechanisms. It may also mean that the solvency position of an IORP is overstated in the holistic balance sheet which may in turn, perversely, make it more likely that such mechanisms will need to be used.</p>	
Q82	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We are not clear what is meant by the term off-balance capital instruments, but if it includes instruments, such as contingent assets, these should be eligible to cover SCR provided these assets may be called upon by an IORP to cover their liabilities should the need arise.</p>	

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Q83	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes.</p>	
Q84		
Q85	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds supports the use of Level B – for many of the reasons identified in the consultation paper, including:</p> <p>(i) the fact that using a discount rate based on expected return on assets encourages investment in long-term assets (since IORPs tend to match their assets to their liabilities), and</p> <p>(ii) this is the approach taken by the current IORP Directive, so disruption would be reduced.</p> <p>The first reason listed above is particularly relevant in light of the European Commission's increased emphasis on long-term investment, not least in the €315 billion investment package unveiled by President Juncker on 26 November 2014. However, the European Central Bank has warned that a holistic balance sheet-based regulatory regime could undermine investment in growth assets and push more investment towards low-risk bonds. This is a significant factor and one which is directly relevant to Europe's prospects for economic growth.</p>	

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Q86	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that Level B should be the default option with national Governments having the option of applying Level A to some or all IORPs in their jurisdiction if they chose.</p>	
Q87	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds supports the use of Level B on the basis that:</p> <p>(i) using a discount rate based on expected return on assets encourages investment in long-term assets (since IORPs like to match their assets to their liabilities), and</p> <p>(ii) this is the approach taken by the current IORP Directive, so disruption would be reduced.</p> <p>The first reason listed above is particularly relevant in light of the European Commission's increased emphasis on long-term investment, not least in the €315 billion investment package unveiled by President Juncker on 26 November 2014. However, the European Central Bank has warned that a holistic balance sheet-based regulatory regime could undermine investment in growth assets and push more investment towards low-risk bonds. This is a significant factor and one which is directly relevant to Europe's prospects for economic growth.</p>	
Q88	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p>	

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	We think that Level B should be the default option with national Governments having the option of applying Level A to some or all IORPs in their jurisdiction if they chose.	
Q89	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that it should be left for Member States to decide whether to implement additional requirements (if any) through social and labour law or through a national prudential regime.</p>	
Q90	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>No. Harmonised recovery periods would not be appropriate given that there are such major differences between national pension systems and the IORPs within those systems. Instead, it should be left to national regulators to determine the appropriate recovery periods for IORPs within their jurisdiction.</p>	
Q91	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that it should be left to national regulators to determine the appropriate period of time for recovery period for the level of technical provisions to be covered with financial assets.</p>	

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Q92	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that it should be left to national regulators to determine the appropriate period of time for recovery period for the level of technical provisions to be covered with financial assets.</p>	
Q93	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>No. Harmonised recovery periods would not be appropriate given that there are such major differences between national pension systems and the IORPs within those systems. Instead, it should be left to national regulators to determine the appropriate recovery periods for IORPs within their jurisdiction.</p>	
Q94	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that it should be left to national regulators to determine the appropriate period of time for recovery period in the event of non-compliance with the SCR.</p>	
Q95	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>We think that it should be left to national regulators to determine the appropriate period of</p>	

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	time for recovery period in the event of non-compliance with the SCR.	
Q96	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Yes, we think this is appropriate. Any subsequent supervisory responses should then be determined by national regulators.</p>	
Q97	<p>The possible future European prudential framework for IORPs could have a significant impact on existing contractual agreements and national and social labour law. In particular:</p> <p>(i) if the new prudential framework were to increase the liabilities of existing IORPs, such as defined benefit schemes in the UK, it could lead to the closure of such IORPs to new members and/or future accrual;</p> <p>(ii) a new, more stringent funding regime could lead to more IORPs having to call upon pension protection schemes which in many circumstances would lead to members' benefits being reduced and may cause those pension protection schemes to get into difficulties themselves;</p> <p>(iii) if a new, more stringent funding regime required sponsors to increase the level of their contributions to IORPs it could lead to corporate insolvencies. It would also have a significant economic impact, as funds would have to be diverted away from business investment. This is likely to negatively impact economic growth and jobs at a time when Europe needs to do all that it can to promote these. Indeed these are two key priorities identified by Jean-Claude Juncker for the new European Commission.</p>	
Q98	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension</i></p>	

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	<p><i>schemes.</i></p> <p>Yes, a lengthy transitional period would be essential in order to enable IORPs and sponsors to adjust to the requirements of the holistic balance sheet, especially if it were to be used as the basis of new capital requirements. A transitional period of at least 10 to 15 years would be appropriate, or perhaps even 25 years, to reflect the time by which most IORPs in the UK are aiming to be self sufficient.</p> <p>Furthermore, IORPs should have the option of applying the Holistic Balance Sheet to future accruals only – the 'grandfathering' option mooted in paragraph 5.139.</p>	
Q99	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Eversheds would argue strongly that the paper should have a further example – example 7 – which would be a 'no change' option. It is disappointing that, throughout the document, there appears to be a presumption in favour of change. 'No change' should also be available as a policy option.</p>	
Q100	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>Example 1 would have a devastating impact on the European economy requiring business to divert cash into IORPs rather than business investment. It would also lead to the insolvency of many sponsors within the EU, the closure of many IORPs and the need for many IORPs to call upon pension protection schemes (with the result that members benefits would need to be reduced). Therefore, we do not see this as a viable option in any way.</p>	

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Q101		
Q102		
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Q107		
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Q110	<p><i>Eversheds does not support the introduction of the Holistic Balance Sheet, but is answering this question in order to help EIOPA develop its policy and ensure the new system – if introduced – is practicable and does not place undue burdens on workplace pension schemes.</i></p> <p>If EIOPA insists on pressing ahead with the holistic balance sheet and does not introduce a 'no change' option (as proposed in our answer to question 99), then example 6 would be the least damaging option for the European economy.</p>	
Q111	<p>We think that the holistic balance sheet should be scrapped and instead EIOPA should focus on ensuring Member States and national regulators develop prudent funding and regulatory regimes for IORPs where these do not currently exist.</p>	