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:	Association of British Insurers	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public

The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions.
- ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
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Question	Comment	
General comment	**The UK Insurance Industry**	

The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 24% of the UK's total net worth and contributing the fourth highest corporation tax of any sector. Employing over 275,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with a fifth of its net premium income coming from overseas business.

Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed. Every day, our members pay out £155 million in benefits to pensioners and long - term savers as well as £58 million in general insurance claims.

The ABI

The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

a. Be the voice of the UK insurance industry, leading debate and speaking up for insurers.

b. Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.

c. Advocate high standards of customer service within the industry and provide useful

information to the public about insurance.

d. Promote the benefits of insurance to the government, regulators, policy makers and the public.

Executive summary:

1. The ABI welcomes the opportunity to respond to EIOPA's consultation on its draft response to Call for Advice (CfA) on the review of Directive 2003/41 second consultation (the CP). We have responded to the technical questions posed, but have general comments to give on the European Commission's review of the IORP Directive and the EIOPA CP.

2. The timetable set by the European Commission (the Commission) for EIOPA is very ambitious, and we appreciate that this has put pressure on EIOPA. However, we believe the consultation period is unacceptably short considering the hugely important and complex issues at stake.

3. Whilst Solvency II requirements can be helpful for improving certain areas of the IORP Directive, for example on governance requirements, this does by no means apply to all areas of the IORP Directive. We are strongly opposed to the application of Solvency II to the quantitative aspects of the IORP Directive. It should be noted that our comments on the technical aspects of the capital requirements below are very much secondary to our view that Solvency II is not an appropriate benchmark for this part of the Directive.

4. The primary objective of any changes to the IORP Directive must be to improve pension outcomes and should be in line with the Commission's objective of achieving adequate and sustainable pensions. We believe that the proposed solvency requirements would have the

	opposite effect and would undermine high quality pension provision. 5. We are extremely concerned about the lack of detail on how the holistic balance sheet (HBS) might operate, and how the employer covenant and Pension Protection Fund might be valued. This lack of detail has made it extremely challenging to respond to the quantitative questions in the CP. 6. These issues are critical to this technical consultation. While we appreciate that, in developing the HBS, EIOPA has attempted to reflect the different set ups of trust based DB pensions schemes in the EU, a proposal that has such far reaching implications for national pension systems and pensioners should not be proposed without detail on how the valuations and calculations relating to the HBS should operate. 7. While the Commission has seen the Solvency II regime as a suitable benchmark for IORPS, caution needs to be taken about using this piece of legislation (currently not finalised) without taking into consideration the specificities of pension schemes in the EU. We provide further examples of this in response to the questions below. 8. Lastly, given the hugely important and complex issues involved in this consultation, we are extremely disappointed with the lack of impact assessment and evidence to support the proposals included in the CP. An impact assessment is critical to understanding whether the changes support the Commission's aim of creating an internal market for occupational retirement provision organised on a European scale. We believe EIOPA's advice to the Commission would not be complete without such an assessment or understanding.	
1.	The ABI agrees with the analysis of the options. We do not see any reason why the IORP Directive should change from a Directive focussed on IORPs established by the employer and/or	

	where the employer plays an essential part/role in funding the IORP. We do however remain concerned about the potential unintended consequences of a change to the scope. Currently the Directive only applies to trust based pension schemes; personal pension schemes are out of scope because they are covered by other EU regulations. The concern is that the introduction of automatic enrolment in the UK may change the classification of personal pension plans, with these falling under mandatory occupational plans. We believe that where an employee may not have taken any action to set up the pension plan, these should still be considered personal pension plans under the Directive.	
2.	In the short time available, we have not been able to do sufficient analysis to develop other options.	
3.	The ABI believes Option 1 is preferable; the scope of the IORP Directive should remain unchanged. Instead the focus should be on enabling more cross-border provision in the existing IORP market. This would seem consistent with the original intent of the review of the IORP Directive to enable more cross-border provision. We agree with the recommendation that the Commission consider the nature of the member protection in pension schemes falling outside the current scope and take legislative action if it concludes that the protection offered is not adequate.	
4.	The ABI is not aware of any such schemes or cases. However, please see our response to Question 1 regarding automatic enrolment in the UK. We remain concerned about the potential unintended consequences of a change to the scope. Currently the Directive only applies to trust based pension schemes; personal pension schemes	

	are out of scope because they are covered by other EU regulations. The concern is that the introduction of automatic enrolment in the UK may change the classification of personal pension plans, with these falling under mandatory occupational plans. We believe that where an employee may not have taken any action to set up the pension plan, these should still be considered personal pension plans under the Directive.	
5.	The ABI agrees with the analysis of the options. It is not helpful to the development of cross-border activity if Member States use different definitions of what cross-border activity is. This creates difficulties with the notification, authorisation and approval processes for IORPs. The CP does however rightly highlight that, while the legal environment is not perfect, it is adequate for some cross-border activity, and that it is possible the lack of take-up is not due to failings of the IORP-Directive but due to lack of demand due to the differences in Member States' overall legal systems, specifically taxation. We also agree that Option 2 is a complex solution because several competent authorities are able to act against the same IORP. We would highlight the risk under Option 2 that IORPs become cross-border schemes accidentally where the parent company is in a different country to the IORP and its members. This could mean that schemes become cross-border schemes even where all the members and the IORP are in a single place. Therefore the IORP would have to comply with the funding requirements and requirements of cross-border schemes. We believe this should be avoided.	
6.	The ABI supports the broad concept of ring-fencing assets to improve protection of pension benefits and improve confidence in funded pension arrangements in general. We would welcome clarity on what is meant by ring-fencing and the impact on members; in	

	particular what is means for cross-border members and non-cross-border members in the same scheme. Further, there are many ways to ring-fence assets in pension schemes and we would be concerned if attempts were made to determine these in detailed EU legislation.	
7.	The ABI has no further comments to make beyond our response to Question 6.	
8.	The ABI has no further comments to make beyond our response to Question 6.	
9.	The ABI has no further comments to make beyond our response to Question 6.	
10.	Yes. However, while Option 1 does not provide a solution to address the existing confusion about the difference between prudential law and social and labour law, the ABI believes there is little evidence to show that the changes under Option 2 will bring any substantive benefits. We are pleased to see the list provided in the CP has been revised to focus on issues of a real prudential nature.	
11.	The ABI believes the impact assessment is correct; however we do note that the implementation of Option 2 will only result in overall benefits slightly exceeding associated costs and therefore question the overall value of the changes	
12.	It should be noted that the ABI's comments on the technical aspects of the capital requirements below are very much secondary to our view that Solvency II is not an appropriate benchmark for this part of the IORP Directive. We welcome that under the holistic balance sheet (HBS) approach allowance has been made for	

	the sponsor covenant and Pension Protection Fund. We are however concerned that EIOPA has not provided an outline of how the sponsor covenant should be valued. We would only be able to accept the removal of the distinction between IORPs once we understand how the valuation of sponsor covenant will work in practice. This calculation will be a crucial part for employer backed IORPs and given the complex nature of any potential valuation this will affect our view on whether the holistic balance sheet approach can truly account for the risks faced by members of UK Defined Benefit schemes. In addition to the valuation of the sponsor covenant, we also have concerns around how pension protection funds will be valued and what affect they would have on the solvency capital requirement (SCR). Finally we would also seek clarification of how pension funds that purchase insurance products such as buy-out or longevity insurance would be treated under the HBS approach.	
13.	The ABI accepts that Article 75(1)(a) of the Solvency II Directive should apply, but that the wording needs to be adapted to allow for the valuations of the sponsor covenant and Pension Protection Fund. We would again state our concern over how the sponsor covenant would be valued on a market consistent basis. We would also have concerns over the volatility that would be introduced to the balance sheet of the IORP from a move to a market-consistent basis and the affect that this may have on asset allocation. There will also be a significant knock-on effect for the wider economy if pension funds shift their investment outlook from the long-term to the short-term.	
14.	The ABI cannot support EIOPA's Option 2, where this implies that technical provisions should be discounted at a risk-free rate term structure without reflecting appropriately the illiquid and long-term nature of the liabilities and details of the valuation of the sponsor covenant. In the UK the stronger the sponsor covenant the more freedom trustees have to evaluate liabilities on the basis of prudently predicted investment returns. Using market consistent-valuation of liabilities without sufficient allowance for the sponsor covenant would place punitively high costs on UK Defined	

	Benefit schemes.	
15.	The ABI agrees that the credit standing of IORPs should not be taken into account when valuing liabilities.	
16.	The ABI agrees with Option 2. This can as EIOPA says, ensure that rules relating to accounting standards do not inappropriately impact on solvency rules.	
17.	The ABI would agree to adopt the amended Article 76(1) if the long-term nature of the liabilities and fact that many pension schemes are not offered on a commercial basis were taken into account. The ABI would prefer Option 1 for the amendment of Article 76(3) and cannot support the amended Article 76(4), as we feel that we cannot support a move to a market consistent basis of technical provisions where this implies discounting pension fund liabilities at a risk free rate. As outlined in our response to Question 14, we would need to understand how the sponsor covenant would be valued before we could accept this approach. The ABI would agree to adopt the amended Article 76(5) assuming Articles 77 to 82 are applicable with appropriate amendments.	
18.	The ABI feels that since the options presented by EIOPA regarding the risk margin are closely related to the decision around the primary valuation principle in Question 14 we cannot comment on the approach that should be taken.	
19.	The ABI would support the proposed amendment to Article 77(2). We feel it is important to observe the distinction for IORPs where technical provisions are calculated on accrued rights.	
20.	The ABI agrees that the best estimate should be calculated on a gross basis.	
21.	The ABI would favour EIOPA's Option 2 with regards to the discount rate. We would not support a move to a risk-free rate without understanding how the sponsor covenant would be valued.	

	Option 2 allows for flexibility in the differences in IORPs between Member States.	
22.	The ABI would agree that expenses incurred by the IORP should be taken into account in the technical provisions as introduced by Article 78 of the Solvency II Directive.	
23.	The ABI would suggest that all benefits should be included in the technical provisions of the HBS, including conditional and discretionary ones. However, there should be a reflection in the holistic balance sheet assessment that discretionary benefits may not always be paid.	
24.	The ABI would support the introduction of the amended Article 79 regarding allowances for financial guarantees and contractual options.	
25.	The ABI would support Option 2 as we believe Article 15 of the IORP Directive is sufficient and that adding the amended Article 80 of the Solvency II Directive would not be necessary.	
26.	The ABI believes Option 2 seems too heavyweight. It requires a great deal of information from the supplier and involves potentially speculative decisions on the viability of the counterparty.	
27.	The ABI agrees with EIOPA's view of introducing the amended Article 82 of the Solvency II Directive.	
28.	The ABI agrees with EIOPA's view of introducing the amended Article 83 of the Solvency II Directive as long as the principle of proportionality would apply.	
29.	The ABI agrees with EIOPA's view of introducing the amended Article 84 of the Solvency II Directive.	
30.	The ABI agrees with EIOPA's view of introducing the amended Article 85 of the Solvency II Directive	
31.	The ABI agrees that the IORP Directive should allow the Commission to adopt Level 2 implementing measure as outlined in Article 86.	
32.	The ABI agrees that Member States should not be allowed to introduce additional rules. Allowing	

	Member States too much freedom to impose additional measures would encourage gold-plating and lead to regulatory arbitrage, particularly for cross-border schemes. However, this provision can only be removed provided sufficient allowance is made in the review to accurately reflect the nature of the various IORPs across Member States.	
33.	The ABI would support EIOPA's view of valuing the sponsor covenant as an asset and take account of their risk-mitigating effect in the calculation of the SCR. This would however depend entirely on how the sponsor covenant would be valued.	
34.	The ABI believes that applying these articles of the Solvency II Directive in the context of an IORP seem rather extreme. IORPs are not insurance companies with claims and reassurance treaties. Only if and where appropriate should these be applied and certainly should only be applicable to IORPs if they are running biometric risks.	
35.	The ABI agrees that subordinated loans from employers to IORPs should be allowed under the review of the IORP Directive.	
36.	The ABI believes that the approach taken regarding security levels for IORPs across Member States should be flexible enough to account for the differences in the types of IORPs that exist. The ABI agrees with EIOPA's decision not to publish a probability as the confidence level selected must be able to account for the different level of security for a member between different types of IORPs. Furthermore we could not accept a harmonisation of the confidence level where the nature of IORPs are different.	
37.	The time horizon is entirely dependent on the details and the calibration of the regulatory framework**.** In the ABI's view Solvency II does not currently recognise some of the specifics of long term liabilities which results in an excessive calibration. In particular due to their longer investment time horizon assets baking long term liabilities are not fully exposed to the market	

	volatility beyond the proportion representing default risk. In this instance extending the current one year time horizon would overstate the capital requirements even more.	
38.	The ABI would be supportive of the principle of calculating a SCR for IORPs but there would need to be flexibility over how this would apply in practice. There needs to be sufficient allowance for the risk mitigating effect of the sponsor covenant and pension protection schemes as well as a confidence level that reflected the risks faced by the IORP and how these differ across Member States or types of IORPs.	
39.	The ABI would support a frequency of calculation of the SCR that takes the proportionality principle into account. We agree with EIOPA that a SCR calculated on a three year basis will reduce the administration costs for sponsors to pay for them, however given the current economic uncertainty larger IORPs should be calculating a SCR on an annual basis as asset allocations may change drastically over three years.	
40.	The ABI would support EIOPA's Option 1 of no introduction of a MCR as this would require IORPs to perform an additional burdensome calculation. A simplification of the MCR might be an easier and less burdensome approach. We find it difficult to accept imposing of a MCR on IORPs without detailed knowledge on the implications of a breach of the MCR for the IORP. We therefore would seek clarity from EIOPA on this issue.	
41.	The ABI welcomes the allowance of pension protection schemes in EIOPA's response to the call for advice. The ABI has no preferred view on how this will be accounted for under the IORP review, but as with the sponsor covenant would have concerns over the rules on how this would be valued.	
42.	The ABI opposes the need for IORPS having to reserve for operational risk, rather this should be covered by cash flow as per the response to Question 68.	

	Within the UK we believe that the biggest risk to members of DC schemes is "investment risk". There are adequate provisions in place within the UK pension regulatory framework to minimise operational risk, and UK employment law would require employers to make good any benefit deficiencies caused by the incorrect payment of contributions. Any additional contribution required to fund the additional capital requirements would effectively be an extra tax on the employer and possibly the members of the scheme. It will be difficult enough for small to medium size employers who do not already have adequate pension provision to fund the additional cost of establishing a scheme and contributing the minimum levels required by UK law required under automatic enrolment. Adding an additional requirement to fund for extra capital will increase that burden. There is also a risk that employers who are currently contributing at levels above that which is required for automatic-enrolment may be forced to divert a proportion of those contributions to fund the additional capital requirement. This would reduce the level of pension provision for the members of such schemes, thereby going against the basic fundamental principle to provide good quality retirement outcomes. The ABI stresses that not reserving for operational risk does not mean the member would lose out, but rather that the IORP has the responsibility to rectify the members' position, just not necessarily through capital reserves. It is difficult to see how this would work in practice e.g. where there is a trust and a sponsoring employer and a provider as parties within the IORP, where would the capital requirements need to be fulfilled/who would fund them? Any capital requirements for operational risk should take account of any capital requirements already in place through other Directives (e.g. Solvency II, UCITS, MiFiD).	
43.	The ABI agrees with EIOPA on Articles 136 and 141 provided the principle of proportionality	

	applies.	
44.	The ABI would agree with EIOPA's Option 1 that allows for the current flexible approach on recovery plans. The length of the plans should be based on the nature and characteristics of the IORP and the Member State in which is provided.	
45.	The ABI agrees with EIOPA on the introductions of Articles 137 and 140 of the Solvency II Directive.	
46.	The ABI does not believe that what constitutes a recovery plan should be included in the IORP Directive. What constitutes a recovery plan and the duration of such a plan should be left to the national supervisor to decide. They are best place to understand the risks faced by IORPs in their markets and will also have knowledge of any recovery plans already in place and will not want to create uncertainty which may unduly jeopardise these plans.	
47.	The ABI believes the prudent person principle provides a wide-ranging and effective basis for ensuring appropriate investment decisions for IORPs and therefore no additional provisions are necessary. We consider that this focus on a clear principle accords with the reasonable expectations of those who are saving for retirement. It also helps to avoid undue reliance on detailed rules.	
48.	The ABI does not believe that Member States should have the option to impose limitations that go beyond the restrictions that may be laid down in the Directive. It is important that the Directive should facilitate a cross-border market in pension products and this would be materially impaired if additional restrictions were to be imposed. We think that pension savers should not be denied access to pension products and underlying	

	investment profiles that conform to the requirements of the Directive. We are not convinced that host member states would need the ability to impose restrictions in this regard on product providers operating from their jurisdiction.	
49.	The characteristics of DB and DC are clearly very different and the investment activities of these different types of scheme need to be focused on meeting their different objectives. In the case of DC this is the choice made by the member which needs to be respected while in the case of DB it is the pension promise to scheme members which needs to be appropriately funded. To the extent that the Directive provisions are expressed by reference to high level principles it should be possible to avoid specifying separate requirements relevant to DB and DC. It is evident that some provisions of the Directive, such as those relating to solvency and associated implications for investment activity within the IORP, do not have relevance for DC schemes. The ABI is not aware of any need to include specific provisions in the Directive relating to DC schemes. We think this should be avoided.	
50.	As regards 7.3 in the CfA, in respect of Article 18(5) the ABI prefers Policy Option 2 of deleting the provisions of Article 18(5) rather than EIOPA's preferred Policy Option 3 which creates potential and we think unnecessary differences between Member States where the member bears the investment risk. The ABI thinks specific foreign currency restrictions under the Article 18(6) of the Directive for DC schemes are not appropriate. Policy Option 2 of deletion for both DB and DC IORPs would also avoid the risk of acting as a cross-border disincentive to IORPs as EIOPA's preferred Policy	

Option 3 would.

As regards 7.8.2 in the CfA, the ABI believes decisions such - as whether to require a default fund and if so, how it should be defined – should be left to national authorities and can be addressed in a way that does not undermine the prudent person principle. In other words, we would not support the imposition of quantitative restrictions at either national or EU level, but believe there is potentially room for guidance that encourages a focus on addressing key issues such as volatility and possible duration mismatch (vis-a-vis annuity rates) in the run-up to retirement. There is also room, as the consultation document suggests, for exchanges regarding good or best practice.

As regards 7.8.3 in the CfA, the ABI agrees with EIOPA's view that there is no prudential justification for introducing Value-at-Risk (VaR)-based restrictions on investment under the IORP Directive.

As regards 7.10 in the CfA:

a. The ABI is not convinced that there is an appropriate read-across from Solvency II criteria on geographical concentration applicable to insurance business. The principle should be adequately covered under IORP by application of the prudent person principle.

b. We think it may be appropriate to retain Article 18(1)(d) third sentence on the need to avoid excessive counterparty risk exposure arising out of derivatives as pension schemes are likely to qualify for some exemptions from general requirements for central clearing of derivatives under the EMIR Directive. The principle under this

	Article may therefore continue to provide an appropriate safeguard. c. The ABI agrees with EIOPA's general view that limitations on investment in the sponsor should exclude sponsor supports. The overall exposure to credit risk of the sponsoring employer is a matter of obvious significance but should not be addressed narrowly with respect to rules on investment in the sponsor.	
51.	On balance, the proposed retention of prohibition on borrowing but with clarification of where this prohibition does not need to apply seems the right approach. The direct leveraging of investment portfolios is not an appropriate activity for pension saving. It should be noted that, many types of asset, not just derivatives, have implicit leverage embedded within them. It would also be desirable to make sure that this restriction does not prevent borrowing in so far as there is an offsetting cash position against which the borrowing can reasonably be netted. The ABI is not aware of any specific need to exempt subordinated loans from the general restriction on borrowing unless this is of a temporary or transitional nature related to the timings of the IORPs cash-flow requirements.	
52.	The ABI would support measures to avoid pro-cyclical behaviour.	
53.	The ABI agrees that the adoption of the substance of Articles 29 and 31, at least in part, and to the extent feasible, would benefit the convergence of supervisory approaches and to the transparency and accountability.	
54.	Yes. In particular the ABI agrees with EIOPA that there is a need for the Commission to establish what the phrase 'verification on a continuous basis' means in the insurance context to see if it is appropriate for IORPs.	
55.	Yes, for DB schemes. The ABI believes EIOPA correctly points out the diversity in size, type of	

	benefits managed, and the level of risk taking that exist within IORPs and therefore the principle of proportionality should be applied both EU wide and within Member States. The ABI does not believe stress tests are appropriate for DC schemes and therefore should be exempted.	
56.	Yes, the ABI believes this is appropriate.	
57.	The ABI believes that given the special status of IORPs, (in general not being commercial financial institutions), that the imposition of penalties should not be made public.	
58.	No. The ABI believes that allowing host Member States to impose sanctions without going through the home Member State would go against the concept of regulation by the home state, which is at the centre of most financial services Directives. There is a risk that some host states will overly penalise infractions to protect national players and restrict competition. If this was allowed, absolute parity with the treatment of 'local' IORPs must be assured. The ABI believes that the better way to deal with this would be for the host state to collaborate with the home state regulator to ensure that any infractions were dealt with on a par with home state expectations.	
59.	The ABI believes that the duties and powers in the IORP Directive should be retained, so that Member States can determine the most appropriate supervisory powers for their population of IORPs.	
60.	Under legislation in the UK it does not seem relevant or possible for DC schemes to hold additional capital over and above the value of the earmarked member benefits. It is difficult to see what extraordinary circumstances would arise in DC schemes that would require capital add	

	ons.	
61.	The advice would make Article. 38(1) of the Solvency II Directive applicable to IORPs. This would introduce more explicit powers for the supervisors of pension funds to require co-operation from providers of outsourced services than under the current IORP Directive. While the ABI agrees that there should be supervision of outsourced functions, we believe that the advice should be revised as to how the supervision is conducted. In the UK, the current drafting of the advice means that there is potential duplication of supervision of insurance companies acting as investment managers or administrators of pension funds. The ABI therefore believes the advice should be revised to make it clear that, where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc. should come from its primary supervisor, not the supervisor of the IORP. It seems the Directive only deals with outsourcing in respect of EU members of the scheme and only allows outsourcing to service providers that are regulated in the EU. The scheme needs flexibility to deal with both EU and non-EU members and the regulatory needs of a wider community of 'host' regulators	
62.	As we said in our response to EIOPA's first consultation, in the UK this could introduce potential duplication of supervision for insurance companies acting as investment managers or administrators of pension funds. This is because in the UK the FSA is responsible for supervising outsourced functions such as fund management. The ABI does not wish to see duplication of regulation for our members. Therefore while we agree that there should be supervision of outsourced functions, we believe the advice should be	

	changed regarding the process of that supervision. The advice should therefore be amended to make clear that where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc. should come from its primary supervisor, not the supervisor of the IORP. The primary supervisory authority of the entity performing the outsourced function should co-operate with the supervisory authority of the IORP to obtain access to data etc	
63.	The ABI believes the advice on general governance is appropriate. In particular, we agree with EIOPA that there are vast differences in the nature, scale and complexity of IORPs among member states and within the same member state, and that a proportionality clause applicable to all elements of the governance framework is therefore vital. We also agree that this proportionality clause may need to be construed and applied more broadly than under the Solvency II regime. However, as we said in our response to EIOPA's first consultation paper we strongly disagree with the analysis in 18.3.23 that states there are no major differences between defined benefits and defined contribution schemes. There is a world of difference between the two types of schemes. For example, defined contribution schemes in the UK need to include a default fund for purposes of automatic enrolment to protect disengaged members from volatility in the run-up to retirement. Such considerations are irrelevant in defined benefit schemes	
64.	The ABI believes EIOPA has identified correctly the areas where there should be differences between insurers and IORPs on general governance requirements. The ABI agrees with EIOPA that the general governance system should not prevent members' participation in governance. The CP also suggests including provisions to ensure a sound	

	remuneration policy, provided the characteristics of the IORP (such as unpaid trustees) does not make this irrelevant. Again, we agree with this.	
65.	As we said in our response to EIOPA's first consultation paper, the ABI believes the proposed principles are disproportionate and are likely to act as a huge disincentive to a wide range of trustees in the UK, to the extent that only highly paid professional trustees will want to operate in the market. The current IORP text states that the IORP must be run by people who have appropriate professional qualifications and experience **or** employ advisers with appropriate professional qualifications and experience. This is appropriate, especially where there are member-nominated trustees, as in the UK, who are advised by professional advisers. However, the advice would require that those who run or who have 'other key functions' have "professional qualifications" "adequate to enable sound and prudent management of the IORP or to properly perform their key function." We disagree with this change and believe the IORP Directive should remain the same so as not to impose a disproportionate burden on schemes. Further we note in paragraph 18.3.19 under the General Governance Requirements of the consultation paper, that the revised governance system should not prevent participation of members in their governance structures. The ABI believes the proposed "fit" requirements would do exactly that and therefore the Directive should remain the same. Alternatively, if the "fit" requirements are applied, there should be an ability to outsource the running of the IORP or the 'other key functions'. Further the "fit" requirements could be applied to those running an IORP as a group, which would not require all individuals to meet this test	
66.	While the ABI believes the proposed 'fit and proper' principles are disproportionate, we believe it	

	is appropriate that fitness and propriety of those who run or have key functions, whether outsourced or applying to those running an IORP as a group should apply at all times. While the ABI believes the proposed 'fit and proper' principles are disproportionate, we agree that there should be effective procedures and controls in place to enable supervisory authorities to assess fitness and propriety.	
67.	It could be argued that powers of supervisory authorities in this are irrelevant because fit and proper is a condition of appointment. A ban will only serve a purpose if they are professional trustees. The ABI does believe however, that those deemed not fit and proper should be given the opportunity to rectify the situation, for example by appropriate training, The ABI also believes that there needs to be a distinction between those who are trying to act in the best interests of the members but fail through a lack of qualification, and those who might have the correct qualifications but act to the detriment of members	
68.	While the ABI agrees with the principle that IORPs should have an effective risk management system comprising strategies, processes and reporting procedures to identify, measure, monitor, manage and report risks, we strongly oppose the need for IORPs having to reserve for operational risks in DC schemes. Rather, this should be covered by the cash flow of the IORP. As we said in our response to Question 42 within the UK we believe that the biggest risk to members of DC schemes is "investment risk". There are adequate provisions in place within the UK pension regulatory framework to minimise operational risk, and UK employment law would require employers to make good any benefit deficiencies caused by the incorrect payment	

	of contributions. Any additional contribution required to fund the additional capital requirements would effectively be an extra tax on the employer and possibly the members of the scheme. It will be difficult enough for small to medium size employers who do not already have adequate pension provision to fund the additional cost of establishing a scheme and contributing the minimum levels required by UK law required under automatic enrolment. Adding an additional requirement to fund for extra capital will increase that burden. There is also a risk that employers who are currently contributing at levels above that which is required for automatic-enrolment may be forced to divert a proportion of those contributions to fund the additional capital requirement. This would reduce the level of pension provision for the members of such schemes, thereby going against the basic fundamental principle to provide good quality retirement outcomes. The ABI would emphasize again that this does not mean the member would lose out; rather the IORP still has responsibility to rectify the member's position, just not through capital reserves	
69.	The ABI does not agree that an ORSA is suitable for employer sponsored IORPs, this assumes that an employer-sponsored scheme is identical in nature to an insurance company. The ABI believes it is excessive to require such IORPs to conduct an ORSA as the sponsor bears the risk. In the UK, sponsors of UK DB funds are required to honour pension promises made to members and cannot walk away from those promises without providing sufficient capital to "buy out" the liabilities with an insurer. Therefore to require an employer sponsored IORP to conduct an ORSA is excessive. Further, the ABI does not see the point of schemes conducting an ORSA where the operation of	

	the scheme is outsourced to professionals. In effect this would mean that the IORP is checking its outsourcing processes	
70.	The ABI does not believe an ORSA is appropriate for IORPs where the member bears all the risk. It is not clear how an ORSA would be constructed for such IORPs as some of the solvency issues that might be relevant for an insurance company should not arise.	
71.	The ABI has no further comments to add beyond those made in Question 69 and Question 70.	
72.	EIOPA recommends that the revised Directive should contain an option for Member States to introduce a whistle-blowing obligation for the compliance function; the ABI believes this is sensible.	
73.	The ABI believes that the compliance responsibilities need to be proportionate to the size and type of the IORP. If the requirements are disproportionate, there is a danger that the costs become prohibitive and impact on the level of support that a sponsor provides for a scheme, which would not be beneficial for members.	
74.	The ABI agrees that introduction of an internal audit function would be beneficial. We are pleased to see that EIOPA recommend that the principles of internal audit must be implemented in a reasonable and proportionate manner. If the requirements are disproportionate, there is a danger that the costs become prohibitive and impact on the level of support that a sponsor provides for a scheme, which would not be beneficial for members**.** We also welcome the proposal to allow IORPs to outsource the internal audit function.	
75.	EIOPA recommend that the revised Directive should contain an option for Member States to introduce a whistle-blowing obligation for the internal function, the ABI believes this is sensible.	
76.	The ABI agrees with EIOPA that there is a need to clarify the scope of the actuarial function in the revised Directive.	

	We are pleased that EIOPA recognises that there are a wide variety of pensions schemes exist in Member States and therefore the role of the actuarial function must be formulated with sufficient flexibility in the revised Directive so as to take account of these differences. The ABI agrees that the cost would outweigh the benefit of requiring verification of actuarial statements and accompanying reports by another actuary, and therefore should not be compulsory, rather an option should Member States chose to do so	
77.	The ABI believes this is a sensible starting point.	
78.	Yes, the ABI agrees it is important that the actuarial function be independent. The actuarial function must avoid conflicts of interest, so as not to be influenced, it will also be important to consider segregation of duties and reporting lines of the actuarial function	
79.	The ABI agrees with EIOPA's analysis of the options and prefer Option 2. While acknowledging the actuarial function must be formulated with sufficient flexibility, Option 2 will provide clarity as to the scope of the actuarial function.	
80.	Yes, the ABI agrees. As noted in the advice, the level of outsourcing and approach followed on the supervision of outsourced activities varies enormously between Member States, and the solution should therefore guarantee a certain degree of flexibility in the system. As we said in our response to Question 61 and Question 62, we believe that the advice should be revised to make it clear that where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc. should come from its primary supervisor, not the supervisor of the IORP.	

81.	The ABI believes this is sensible.	
82.	The ABI does not believe that the minimum elements of an outsourcing contract should be set. Contract elements must remain flexible so they can suit each particular outsourcing situation.	
83.	The appointment of a depository is not the only way to safeguard the assets. This may be carried out by the pension provider or fund manager for example. The ABI believes that regulation of the asset management industry is sufficient to ensure the safeguarding of DC scheme assets. Duplication of these safeguards seems unnecessary and costly. Further, the consultation correctly points out in paragraph 26.3.22, there is the potential for duplication by applying the principle of a depository to pension institutions. In trust-based systems, trustees are required by law to have oversight and ensure the safe-keeping of assets. UK occupational schemes will typically use the services of a custodian. The ABI therefore supports Option 1.	
84.	As stated in our response to Question 83, the ABI would not want to see duplication by applying the principle of a depository. We believe this is costly and unnecessary, especially in trust-based schemes. The ABI supports Option 1.	
85.	The ABI has no further comments beyond our response to Question 83.	
86.	The ABI has no further comments beyond our response to Question 83.	
87.	The ABI has no further comments beyond our response to Question 83.	
88.	The ABI has no further comments beyond our response to Question 83.	
89.	While the ABI agrees in part with the analysis, we do not believe that the benefits of Option 2	

	outweigh the costs, and therefore Option 1 is preferred. As EIOPA correctly points out, a proportionate information regime is needed as IORPs generally represent less of a systemic risk than insurance undertakings, (in the UK) are linked to a sponsoring employer and are usually provided on a not for profit basis. We also believe that Option 1 provides for a proportionate approach to be taken by supervisors and allows for essential information to be provided on a flexible basis, as and when necessary, in a way that supports member protection. The ABI believes Option 2 is disproportionate and burdensome, with the costs outweighing the benefits. There is also the potential to increase member opt out resulting in a reduction in pension provision.	
90.	As discussed in our answer to the previous question, the ABI believes that Option 1 (leave the IORP Directive unchanged, subject to an additional clause on implementing measures) provides supervisors with sufficient flexibility to determine at Level 2 what information is required to be collected with the additional ability to collect ad hoc information as and when necessary. In most areas the information required by supervisors is specific to that Member State (for example the circumstances, climate and pension arrangements found in that State). Individual supervisors are best placed to know the specific issues and areas of concern within their jurisdiction and the sort of information needed to monitor these. To require supervisors to collect information which is not relevant or necessary will add to costs and increase the burden on IORPS. Any convergence of information to supervisors should be given a great deal of consideration prior to implementation and only in areas which are relevant to all supervisors should convergence measures be implemented.	
91.	No. The ABI shares EIOPA's view that additional information requirements in respect of DB	

	schemes are not necessary where employers/IORPs carry the investment risks and members are not asked to make choices specifically regarding their pension schemes.	
92.	The ABI believes that improving communication with policyholders is an important part of improving consumers' understanding of pension products. Providing information in a clear, relevant and timely way allows prospective policyholders to compare the key features, benefits and risks of their scheme and therefore decide if it is right for their needs. However, in many cases the choice of an IORP will rest with the employer rather than the individual and any requirement for comparison would be at the employer rather than member level and this will limit the need for comparison information in a KID. Further, the sponsoring employer of the IORP will be best placed to understand the membership demographics, and be able to make their own judgement on the type and level of disclosure applicable, subject of course to statutory disclosure requirements. EIOPA rightly concludes that the variety of DC schemes (and the need to provide country-specific information) will make it hard to achieve standardisation of disclosure. This is exacerbated by the fact that the schemes may invest in several different funds, so a disclosure document designed for one fund cannot simply be expanded to make it a product level disclosure. On this basis, we believe that EIOPA need to be wary of using the KIID developed for UCITS as the starting point for pension (and product) disclosure. EIOPA should start from consideration of how consumers make decisions about products and indeed whether they have a choice (for example with default options and auto-enrolment where no choice is involved) and the kinds of information they are therefore likely to need.	

	The provision of past performance information may also pose a problem. Past performance is no indication of future performance and may be seen as making 'false promises,' Further with the number of health warnings required over the use of past performance data it is questionable as to how much use it actually is to members i.e. providing them with information and then telling them that this information is, in fact, meaningless could be counterproductive. Also, in schemes with a large number of fund choices the provision of past performance information may result in a very large document. Information on individual fund choices may be better placed elsewhere – where the member can access it if they choose to do so. The ABI would also emphasise the need to ensure that disclosures provide useful information which presents the pros and cons of enrolling in a balanced fashion. While we support the provision of information to potential policyholders, we are concerned about the extent to which disclosure which overly focuses on the negatives, may prove a barrier enrolment	
93.	Risk/reward profiles can vary over time but other options (and features) add to the complexity of the investment situation (such as different forms of life-styling and time-based risk management). The situation will also vary with how long the individual remains active in the scheme (rather than being a deferred member), how much additional contribution they make, what their long term risk strategy is etc. The number of potential variables involved in ascertaining an accurate investment risk profile is such that anything other than a basic risk comparator soon becomes virtually meaningless without full, individually tailored, professional advice. To avoid this complex, and arguably unnecessary level of information, the ABI believes risk comparisons should be kept simple and understandable – pitched at an appropriately high level.	
94.	Providing scheme members with a personalised annual statement, such as currently done in the UK for DC schemes, would allow the individual the opportunity to make informed decisions about	

	their retirement savings. However the information is only of use if members actually read it and anecdotal evidence suggests that the shorter the document is the more likely people are to read it. Therefore the ABI believes there is an important balance to be struck between useful, relevant, information and overloading individuals with too much information (which is likely to result in them not reading any of it).	
95.	Many of the information requirements proposed are sensible, and while some basic information may be appropriate for harmonisation, due to differences in provision, culture and options within Member States, minimum harmonisation would be appropriate. Therefore, the ABI does not support the inclusion, at Level 1, of a mandatory list of information with the disclosure document and suggest more work needs to be done to establish what information of required by potential policyholders. It is vital that information to scheme members is succinct and relevant – this is more important than harmonisation. Over harmonisation will lead to members receiving information which is not appropriate, relevant or useful and this would be counterproductive.	
96.	While the ABI agrees with some of the qualitative impacts identified in EIOPA's CfA, we would suggest that the potential negative impacts of providing members with too much information which is either irrelevant, inappropriate or overly complex should also be taken into account. The primary consideration must be retirement scheme members and encouraging and reinforcing retirement provision as a positive step. Causing members to refuse to read information due to length, complexity or lack of relevance would be entirely counter-productive to the aim of increasing member protection through the provision of harmonised information. In addition, IORP II must be set at a minimum harmonisation level, which provides members with the relevant investment risks, warnings and information in a way suitable to the circumstances of	

| | the Member State would be the best way to achieve the desired member protection. | |