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:	**AEIP** (European Association of Paritarian Institutions of Social Protection)	
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. ○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	**Comment**	
General comment	1. AEIP regrets that the consultation period is taking place on such a short time frame. Therefore AEIP might return with further comments on some of the issues at a later stage.	

	AEIP is also worried about the short time frame that EIOPA allow itself for analising the answers to the consultation, and for drawing conclusions out of them. 2. AEIP stresses that sometimes answers are formulated on specific questions, even when AEIP disagrees on the principle or option that is proposed. 3. Level playing field between operators is often brought forward as one of the objectives that should be achieved. In most member states, IORP's are not-for profit institutions established by employers or social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). They have a fundamentally different activity then a commercial undertaking, and should therefore not be treated in the same way. 4. Following all of EIOPA's proposals would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financing cost for the scheme's sponsor(s). When the possibility exists to avoid those costs by using an insurance solution, even when it means more risk, they might be tempted to do so. In several member states pension schemes can be managed by insurance companies through unit-linked products (thus without any guarantee from the insurance company). The corresponding assets are on the balance sheet of the insurance company and are not subject to any solvency requirement (besides a 1% margin for covering the administration risk) since the insurance company doesn't take any financial risk. Although fully comparable to sponsor-backed IORP's in terms of risk sharing that solution would enjoy a huge competitive advantage if sponsor-backed IORP's would be subjected to the holistic balance sheet approach 5. Review of the IORP directive can not be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of political nature.	

	Pension policy and social protection policy are different from consumers policies. In a large number of member states, pension benefits come mainly from schemes embedded in national law. Complementary schemes are in most cases compulsory as a part of the national labour law or collective labour agreements. Therefore they are not involved into any level playing field and do not compete with eachother or with other providers6. The goal of the regulation should consist in facilitating the existence of good pension schemes for the European workers and citizens. In a number of member states pension schemes exist since a long time. They are regulated and function well, and can prove a track record in delivering pensions. The aim of the directive should not be to bring new regulation to systems that function well in member states that have already a sound regulation in place. 7. AEIP is convinced that the weak success of cross border pensions is not a sufficient justification for such a deep review of the content of the IORP directive. The barriers for the setup of a cross border activity are not only of prudential nature. They have to deal also with tax issues, resistance of local stakeholders, costs for managing a complex legal environment, and possibly also a basic lack of demand since cross border economies of scale on the asset management side can also be achieved by other means. 8. The directive takes the single market as starting point. It must however take the social aspect of pensions fully into account, as they are part of the European social model. Regulation of pensions might not result in a situation wherebye employers become discouraged to provide occupational pensions because of the cost/risk balance. AEIP believes that strong collective occupational pensions are superior to individual pension solutions, both from an economical as a social perspective. Pensions should continue to be considered as part of labour agreements. Collective schemes instaured and managed by social partners have a proven long term track record. 9. The EIOPA text deals a lot with consumer protection. AEIP believes that this starts from a wrong	

assumption. Starting from false premises leads to wrong conclusions.

Startig from a consumer protection idea assumes that pension funds are commercial operators providing a product, and scheme members are consumers of this product. The benefits managed by pension funds are not like that. They are in most cases mandatory because they are part of collective labour agreements in industry sectors, or because they are part of the employment relation between en employer and his employees. They are as such not consumer products that are consumed.

AEIP rejects the approach that collective pension scheme members are to be considered as consumers only.

10. The basis for the review of the IORP Directive should be the IORP Directive itself and the different reports published by the CEIOPS. It is not appropriate to use the framework of the Solvency II Directive as a starting point.

11. A revised IORP Directive should be able to handle different pension systems and the variety of pension agreements, including hybrid systems and leave enough flexibility for national decisions in this respect. A revised IORP directive should also leave enough flexibility for future adjustments of pension arrangements and for new kind of pension agreements. The European level should only intervene in the subsidiarity if national legislation fails to comply with the relevant principles of a single market.

12. AEIP wants to stress that proportionality should be taken into acoount when drafting and applying regulations. They should not be an administrative burden. The rules must not constitute a hurdle for employers to provide pension benefits via IORP's, or smaller IORP's to operate.

13. IORP's deal with long term commitments. They are an important source of institutional investment, and can play a stabilising role in crisis situations. IORP's are true long term investors.

	Therefore standards should be drafted in such a way that they are not procyclical nore intensify short term trends. If the whole financial industry turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil. This creates a huge systemic risk. AEIP would like to warn for systemic risk and pro-cyclicallity that will result from applying a similar approach on all of the institutional investment. The use of market prices for calculating pension assets and liabilities, especially the application of spot discount rates, and the implementation of quantitative risk-based funding requirements aggravate indeed pro-cyclicality in pension fund investments. 14. Applying a solvency II type approach to pension funds will have consequences on the benefit levels and the social protection models in member states. But it will also have important consequences that go well beyond the pension benefits themselves. The derisking that is a consequence of the market value approach will have impacts on the capital markets. Who will be left to take long term commitments? Who will be left to finance illiquid assets? The proposed changes will have macro-economic impacts on employment and growth. AEIP therefore believes that this is also the responsibility of other DG's in the commission. 15. A new directive should not lead to the shift from one type to another, e.g from defined benefit to defined contribution or hybrid schemes or vice versa, or from collective to individual, or occupational to private	

	16. The liabilities encountered in pension schemes can be very different from those in a insurance contract concluded between parties. Benefits can be conditional, they can even be reduced when employers and employees agree, pension protection schemes can interfere. Especially in those schemes that are negociated between social partners, liabilities are not to be treated as fixed items. Security becomes as such in some types of scheme part of the pension promise itself. Harmonisation will be very difficult because of the differences in the schemes. 17.The freedom of social partners to negociate on occupational pensions should not be hampered. AEIP regrets that Art. 28 of the Charter of fundamental rights, wich is now binding for any EU-action, is not mentioned in the draft response of EIOPA. In many member states non-profit IORP's on collective agreement basis play a very important role, especially to widen the coverage of supplementary pensions systems. The jurisdiction of the ECJ (see C-45/09 – Rosenbladt, paragraph 67 et seqq.) attributes to the social partners a wide power of discretion by collective bargaining, also on occupational pension systems. Art. 153, 154 and 155 of the Lisbon treaty also recognises the role of social partners and social bargaining in shaping social policy. This power has to be safeguarded even by any European action. 18. Best practices exist in member states. AEIP supports a flexible approach by control authorities. 19. AEIP believes that thorough and multiple impact assessments are needed before issuing decisions at level 1.	
1.	AEIP stresses that the question of the scope of the IORP Directive is not of technical nature, but has political implications. Indeed it touches on questions with regard to the extent of the fundamental right and the autonomy of social partners to collective bargaining, and with regard to the dividing lines between pillars. AEIP acknowledges however that a revised IORP directive might have a major impact in those	

	member states that have already strong funded occupational pensions in place and that are into the current scope of the IORP directive. They might be faced with far reaching consequences of a harmonization, whereby other pension systems would stay out of its scope. A unique and harmonized security level at the European level should not interfere with pension deals that are negotiated between social partners at national level. AEIP invites the decision makers at European level to take this highly politically sensitive issue into account when defining rules. Taking the above into account, AEIP supports the option 1 "leave the scope unchanged".	
2.	We refer to our answer on question 1.	
3.	We refer to our answer on question 1.	
4.	We refer to our answer on question 1.	
5.	AEIP agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. In this respect, also clarity is needed on what is covered by prudential regulations and social and labour legislation. AEIP likes to stress that the respect of social and labour law, including compulsory membership and the existence of solidarity elements, together wiith the recognistion of the role of social partners in negociating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law" of the host Member State should be interpreted widely enough. AEIP considers it more appropriate to link the definition of Host Member State to the state which social and labour provisions are applicable in the relation between the employer and its (former)	

	employees, than to the mere location of the Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed. The requirement of full funding in case of cross border activity is contradictory to the principles of a single market.	
6.	Yes, the options respond on concerns of the call for advice. In the context of art. 16.3 AEIP agrees on Option 1. AEIP thinks that there should also exist a possibility for member states to prohibit ring fencing.	
7.	Ring fencing might have a positive impact: with homogenious criteria there will be a more homegenious protection, what seems fundamental in the case of a cross border activity. But there are major negtive impacts: more administrative tasks and thus possibile increase of costs, and no possibility for an employer to really act on European level by offset surplusses and deficits of different schemes. This last point can however lead to arbitration of opportunities by compensating intenal shortage with assets of another country.	
8.	AEIP thinks that it should be up to member states to prohibit or not the ring fencing. Some member states might want to maintain investment rules as a prevention against imnprudent investment decisions besides a principle based pension protection regime.	
9.	Privilege rules might be introduced because the social mission of IORP's imposes to protect members rights at maximum level.	
10.	AEIP agrees. However, "conditions of operations" could also include governance and organisation of the IORP. It seems advisable to provide for a default clause in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible : all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State.	
11.	AEIP shares the impact analysis of EIOPA.	

12.	AEIP rejects the idea of imposing on EU level solvency II type quantitative capital requirements. However, if the commission would not refrain from capital requirements on all types of IORPs, we would like to understand the full consequence of the holistic approach as the possibility to completely replace quantitative capital requirements by qualitative elements or mitigation techniques. AEIP rejects the idea of valuing sponsor guarantees, pension protection systems or possibilities to make benefits conditional in an explicit quantitative way (monetary terms). We invite EIOPA to consider a qualitative approach rather than a quantitative balance sheet concept. AEIP would therefore prefer the concept of 'holistic approach' instead of 'holistic balance sheet'. The holistic approach is interesting and has positive and negative aspects. We appreciate the EIOPA analysis on specific characteritics of the IORP. AEIP beleieves that any decision over this matter has a political component, since there might be relevant impacts over the structure and nature of occupational pension schemes in Member States. The nature of the commitment taken by the pension vehicle is essential to design its supervisory framework. It is clearly the case for the insurance companies in Solvency II. They must guarantee their commitments. Not taking the nature of the commitment into account, would lead to a de-level playing field between different vehicles. There is a distinction between the commitment of a scheme sponsor, and the commitment taken by the pension institution. This is a strong argument in favour of maintaining the distinction referred to in Article 17 of the IORP Directive. The concept of the holistic approach might be used (taking in consideration the technical remarks) for the evaluation of a pension scheme or system. It could therefore be used to judge the sustainability of a pension scheme or system independent of the vehicle which is used to finance it. The analysis of the security and sustainability of the pension scheme goes and should go beyond the	

	IORP directive as it applies to all pension schemes or systems independent of the vehicle that is used. The EC could address this in the forthcoming white paper on pensions or take a separate initiative. In favour of the holistic approach speaks that it allows for the assessment of different pension contracts at an abstract level. IORPs would consider elements that are beyond the IORP itself and that are key differences from insurance. This could be seen as representing the interrelation between social aspects and prudential aspects within the field of occupational pensions. Particularly the ability to rely to sponsor support and/or pensions protection schemes and the existence of benefit adjustment mechanisms. Steering mechanisms are considered, the possibilities for arbitrage decrease, and difference with insurers becomes visible. There is also a lot against the holistic approach. Neither the implementation measures nore the impact are very clear. And the approach might be too cumbersome to work with. Assuptions are accumulated, and create insecurities. An important model risk will appear. The regulation of the IORP should focus rather on the institution and not on the scheme. Generally, the holistic approach is considered to be too complex to be the regular and sole European supervisory instrument. It could however be a useful option as an internal model for large diversity of pension contracts (defined benefit, defined contribution, hybrid schemes). From a more technical point of view AEIP agrees with the idea that a prudential approach should take into consideration the distinction between guaranteed and conditional benefits (and possibly discretionary benefits) including the existence of benefit adjustment mechanisms. The level of security is indeed part of pension contract. The extent of benefits to be evaluated and the actuarial method to be used will influence this component. When putting on the asset side of the balance sheet things like a sponsor covenant, it denies that in reality it is more the liability side that is not fixed. Conditional benefits, or adjustment mechanisms	

	wherebye pensions are adapted when assets are insufficient, are part of the pension promise and of the liabilities, which are not fixed an can not be approached through formulating an assumption. An obligation of means is not equal to an obligation of results. This makes the solvency II framework that is created for valuing obligations of results, less workable for IORP's. Moreover, when a sponsoring employer is subject to international accounting standards, he is obliged to hold in his accounts a buffer reserve to cover his pension liabilities when assets might be insufficient. Imposing the pension institution to hold also a buffer reserve would mean that security on top of security would be required. This is excessive. This is a strong argument in favour of activating a sponsor covenant only when it is needed. The experience of the AEIP members with risk based supervision clearly indicates that supervisory flexibility is of utmost importance for sustainability. We invite EIOPA to make the impact assessment of the holistic approach.	
13.	AEIP considers that the evaluation of assets, according to the 'fair value' principles should not be the only principle applicable because the long time horizon in wich IORPs operate can permit other criteria. AEIP believes that it should be left to member states to define the evaluation standards for assets. During the discussions wthin AEIP a lot of questions are raised regarding the valuation of assets according to the 'fair value' principles. Because the long time horizon in wich IORP operate other criteria can be valid. "Market-value"-accounting brings considerable volatility within the balance sheet. Combined with the necessity of meeting the Solvency Capital Requirements at all times, IORP's become very vulnerable to (irrational) market behaviours. Instead of being stable, sometimes anti-cyclical investors, that stabilize financial markets, IORP's are forced to follow the trends therefore fuelling eventual irrationalities of capital markets. They had to adjust contribution rates	

	swiftly and sometimes beyond economic means if market developments work unfavourably against them. Art. 75 implies – like in all fair-value accounting – that markets exist. This is neither true for assets nor for liabilities. Any assets that are held to maturity in order to cover liabilities shouldn't necessarily be valued on a mark-to-market basis, instead IORPs should have the option to value them on book value. If the whole financial industry turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil, creating procyclical behavior. This creates a huge systemic risk. Pensions schemes, formulas and systems, especially those driven by social partners, are adapted when new economical and/or societal happenings appear. A revised IORP Directive should be flexible enough to accommodate future developments and innovation of pension systems. A quantitative impact study and impact assessment seems essential before making any decision at level 1.	
14.	AEIP agrees with option 1. Reference to transfer value is not appropriate Liabilities that are valued in a market consistent manner are not necessarily equal to a transfer value. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, this is not the case for IORPs. Also the transfer value might differ in case the transfer would go to an insurance company or to another IORP. AEIP wants to stress that a mark-to-market approach for pension liabilities may be inappropriate. Currently there are almost no markets for pension liabilities in continental Europe. All liabilities have to be marked against a certain model. But even the asset side suffers under fair value accounting: pension liabilities are very long-lasting. The average duration of a pension fund may well exceed 20 years. To replicate these liabilities with an assets portfolio that matches the liability structure, huge	

	parts of the assets must have durations longer then 15, 20 or even 30 years. There are almost no fixed income assets with this duration available on the capital markets. IORP's are unable to achieve a matched asset liability structure. Therefore the high duration of the liability side with the asset liability mismatch drives risk and volatility of the IORP's P&L. We repeat that if the whole financial industry turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil, creating procyclical behavior. This creates a huge systemic risk.	
15.	Taking the credit standing of the IORP into account, is denying the going concern principle. It would lead to an unclear and ineffective situation. The idea starts from the assumption that there is a market available to take over the liabilities. This is not the case, certainly not in continental Europe. AEIP believes that taking into account the specific structure and functioning of IORP's, the own credit standing of IORPs should not be taken into account when valuing liabilities.	
16.	AEIP believes that harmonization with accounting rules should not be a driver for a new IORP framework. AEIP believes that current IAS / IFRS regulation are unfit to form the basis of a solvency regime for IORP's. IORP's do not compete for investor's money and there is therefore no need to use investor related accounting rules like IAS / IFRS. IORP should use accounting rules based on prudence and with averaging mechanisms, at least when it comes to solvency needs. For industry-wide operating IORP's and their sponsoring companies no international accounting rules exist that seem to be applicable. Liability figures for each sponsoring company cannot be provided in schemes which are calculated via "collective equivalence" and partly funded / partly PAYG. Therefore we prefer option 1.	
17.	AEIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the commission would go through with this idea, we would like	

	to give the following comments. AEIP agrees with EIOPA's view to adopt art. 76(1), 76(4) We think that the valuation of liabilities based on financial data is sufficient to approach a fair value or market value. We consider the idea of "market consistency" to be directly linked to transfer values and the use of the lowest risk interst rates for discounting. We do not agree on the use of the latter. 76(5) refers to art. 77. It contains the risk-free interest rate term structure and other elements that we do not support. The term 'obligations' is not the right term for hybrid schemes. We suggest to use instead the wording 'current benefits'.	
18.	AEIP rejects the idea of imposing capital requirements by asking for a risk margin as a general rule. AEIP prefers option 3. Only when there are in the member states no regulated own funds, option 1 is valid, an explicit risk margin to cover adverse deviations from assumptions.	
19.	IORPs should not be obliged to take future accruals into account in their calculations, but they should be allowed to take them into account if their actuarial method chosen is based on the principle of (collective) equivalence.	
20.	AEIP agrees to this proposal.	
21.	We disagree with both options, because we share the analysis in 9.3.69. AEIP would like to bring option 1 back on the table. The negative impacts for options 2 and 3 are far more important.	
22.	AEIP agrees to this proposal.	
23.	We agree that pure discretional benefits should not be included in the technical provisions (9.3.123). AEIP is not in favour of the concept of surplus funds in order not to raise false expectations as the very mentioning of assets in a surplus fund that could be used for discretionary benefits could	

	possibly be interpreted as an indication that the discretionary benefits will be given.	
24.	AEIP agrees that contractual options should be fully disclosed in the value of the technical provisions. When discretionary benefits are given, this should be made clear to the beneficiaries.	
25.	AEIP favours option 2. Splitting the technical provisions into homogeneous risk groups should be left as an option.	
26.	AEIP favours option 1.	
27.	AEIP agrees with this proposal.	
28.	AEIP agrees with this proposal.	
29.	AEIP agrees with this proposal.	
30.	AEIP agrees with this proposal. We draw EIOPA's attention to the fact We draw EIOPA's attention to the fact that sometimes national tax law does not allow pension funds to raise the amount of technical provisions without risking ther tax-free status. These problems should be solved before requiring pension funds to do so upon request by supervisors. Furthermore any rise of technical provisions has to be ordered with due consideration concerning amount and time. Otherwise the sponsor(s) could get damaged.	
31.	Many quantative impact studies within Solvency II showed that the most important burden derives from the calculation of technical provisions. Especially the design of the risk free discount curve builds up enormous pressure. These are aspects whose details are fixed on level 2 within the Solvency II process. The most important aspects that decide about the future of the pension fund industry must however be decided on level 1. AEIP is worried because the technical measures regarding the holistic approach are part of level 2, ans are not yet known. They can have far reaching consequences. AEIP therefore urges to do a quantitative and qualitative impact study, before taking any binding decision on level 1.	
32.	We draw the attention to an answer to an earlier question. Social and labour law" of the host Member	

	State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labor law. We suggest to provide only rules regarding minimum requirements. This will lead to a desired level of security. In that case an article prohibiting additional rules is redundant. For these reasons we support option 1: Art. 15 (5) of the current IORP directive should be retained.	
33.	We are concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. There should be more simple methods to allow for taking sponsor support into account, not in monetary terms. We fear that this might lead to an obligation to recognise the same amount in the sponsors balance sheet. Specificities of industrie wide IORPs on a collective agreement basis, for instance a large number of sponsoring employers, as well as the feasibility of some of such IORPs to combine increases in contributions and subsidiary liability forms of sponsor support have to be recognised in a proportionate way.	
34.	Taking the aim of the three tier system into account - to cluster different levels of security (SCR / MCR) by applying different kinds of own funds - we find the whole approach artificial. Usually IORP's do not provide of tier 2 or tier 3 capital. The sponsor covenant - provided on legal or contractual basis - is sufficient. We therefore do not welcome the application of Articles 87-99 of Solvency II to IORPs. However, if it would be decided to apply the concept of own funds to IORP's, the solvency II rules should at least be altered to take the specificities of IORP's into account. IORP's have no own shares, neither do they have subordinated liabilities. This brings the definition of basic own funds to the excess of assets over liabilities. Moreover, the concepts of ancillary own funds surplus funds, and tiering of own funds are irrelevant and not applicable to IORP's. Only in case the holistic approach is adopted (what we regard as only the second best solution) the differences	

	between unconditional, conditional and discretionary liabilities could be expressed in some form of tiers.□	
35.	AEIP thinks that subordinated loans from employers to the IORP should be allowed. They might however only be possible in cases of temporarily problematic, but going concern situations.	
36.	AEIP thinks that a uniform security level is almost impossible to achieve. The diversity and complexity of pension schemes throughout Europe is such that national supervisors need to have leeway to judge and rule specifically. We do not find that leeway within the standard formulas of Solvency II. The decision regarding the adoption of a uniform confidence level across EU countries as well as the definition of a specific probability for the confidence level is of a highly political nature. We agree with the decision not to propose a specific probability for defining the confidence level. Defining the level of security is up to the member states and in paritarian schemes up to employers and employees. In the latter case the fundamental right of collective bargaining has to be preserved. Moreover, the security level is sometimes part of the pension promise. AEIP thinks that the IORP directive should not prescribe a uniform level of contribution rate, accrual rates or indexation policy, nore a uniform level of security of pension income There should be an appropriate balance between affordability, adequacy and the level of security.	
37.	AEIP rejects the idea of imposing capital requirements based on value-at-risk calculations as a general rule. However if the commission would go through with this idea, we would like to give the following comment. If a value at risk oriented calculation for capital requirements is chosen - which we think is inappropriate for pension funds - we agree that a one-year time horizon is sufficient.	
38.	AEIP still questions why EIOPA does insist on capital requirements for IORP's because their security mechanisms are constructed in a sustainable way and work for much longer periods. We regard the fact that on one side EIOPA thinks that pension funds are much more complex and diverse than	

	insurance companies - which under Solvency II would unevitably lead to the need for a specific internal model because the standard model does not fit - and on the other side admits that almost none of the pension funds are able to develop and use an internal model due to their limited administrative capacity. This shows the inadequacy of Solvency II-rules. The Solvency II directive is based on a risk-based supervison. Other examples of risk-based supervision exist already at present in some of the members states. They do not apply all Solvency-II rules for calculating the solvency capital requirement. One can learn from existing best practices. They tend to prove that flexibility is required from supervisors, that very tight rules do not work in crisis situations, and even produce undesired effects. How can specific security and benefit adjustment mechanisms be properly valued and how sensitive is the approach to assumtions ? This requires several impact studies. We agree that adjustment mechanisms of IORPs should be reflected in the SCR: each pension scheme should be allowed to present its own mixture of risk mitigation techniques to lower qualitative or quantitative requirements. We agree also with the analysis in 10.3.58-60. We draw your attention like we mentioned beforeon the fact that if the whole financial industry turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil, creating procyclical behavior. This creates a huge systemic risk.	
39.	We agree to the analysis of EIOPA that a yearly assessment is very costly. Therefore we believe that all calculations can be done at least on a three-yearly basis, at the discretion of member states.	
40.	AEIP rejects the idea of imposing minimum capital requirements as a general rule. What will be gained by making the minimum capital requirement dependent on the solvency capital requirement, as it is the case in Solvency II?.	

	The aim of a minimum capital requirement calculation under Solvency II is to allow in case of the insurance companies insolvency, to close the company for new business and start to transfer assets and liabilities to another insurance companies. This is different for IORP's. There are sponsor guarantees and the possibility for benefit adjustments. Winding up the IORP would not help the members or beneficiaries especially if the scheme contains solidarity elements that cannot be transferred to another pension fund or insurance company. Therefore we suggest option 1 regarding the existence of MCR (10.3.102). Therefore any other options need not to be judged.	
41.	A pension protection scheme is an instrument to provide pension security. In a holistic approach all the different security mechanisms should be included. The question remains on how they will be valued. We are concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. We support a qualitative rather than a quantitative approach.The question if they should reduce sponsor's insolvency risk or be treated in the holistic approach must be judged on national level due to the construction of the pension protection scheme. If the scheme protects the fund itself it has to be treated as a separate asset. If it protects only sponsors it has to be taken into account by reducing sponsor's insolvency risk. A sectorwide agreement in which liabilities are shared by a large number of employers has similar effects as a pension protection system.	
42.	DC schemes are the most insurance-like IORP's. We agree that operational risk is very important for DC schemes where investment risk is borne by plan members with the possibility that it could be reduced under specific circumstances where there exist other provisions against operational risk. EIOPA should consider the option to reduce the requirements for operational risk, when an IORP is able to show that its operational risk procedures are appropriate.	

	AEIP is in favour of option 3. If capital requirements were to be imposed, they may be tailored to the actual risk profile. We find it sensible to distinguish between DC and other types of schemes since the security mechanisms discussed above (i.e. sponsor guarantee) covers operational risk as well as all other kinds of risk.	
43.	Except from the general provision in Article 136 all following article do not reflect the situation of IORP's where sponsors or participants bear the risk. AEIP supports article 136 of the Solvency II Directive. Indeed, when the IORP disposes of procedures to identify deteriorating financial conditions, they will know how to act in stress situations. Applying article 141 would require amendments to make it suitable for IORP's. They are not confronted with the possible dilemma between the interests of policyholders and of shareholders like this is the case for commercial insurance companies. IORP's have stakeholders, sponsors and beneficiaries that are all victims of financial stress situations. In such a case, the primary action of the board of the IORP and in case the situation deteriorates too far also of the supervisor, should not be to restore as fast as possible the solvency position, but to take appropriate measures for all of the stakeholders.	
44.	A holistic assessment of the need for recovery plans is necessary. The provision within IORP I seems to reflect better the situation than the provision within the Solvency II regime. This is especially true regarding the recovery periods. Too short recovery periods would put an unnessessary burden on sponsors, or would seriously harm the pension benefits of the participants without a real need to do so. What IORP's have to do is provide liquidity during the recovery period. By doing so a fixed length of the recovery period is not a stringent necessity. AEIP is therefore very much in favour of option 1. This option retains the current flexible position on	

	recovery periods. The recovery periods of Solvency II are not appropriate for IORPs. Short recovery periods will stimulate IORPs to a procyclical investment policy, which does not only harm the pension incomes, but also the European Economy as a whole. After the crisis in 2008, many national regulators decided to lengthen the recovery period due to the character of the crisis. Such kind of flexibility should also be possible in the revised IORP Directive. In contrast to banks or insurance companies, there exists for IORP's no risk for a 'run on the bank'. IORPs manage long-term liabilities, and can economically support longer recovery periods than insurance companies or banks A revision of the IORP Directive should take this into account. AEIP thinks that several quantitative impact assessments are needed before deciding on recovery periods.	
45.	AEIP agrees that a supervisor migt be allowed to impose a prohibition to free disposal of the assets within the IORP. This should however be limited to extreme cases of mismanagement which should in principle be at first adressed by the fit and proper regulation. We repeat that there is no conflict of interest between sponsors and members / beneficiaries. Especially if sponsors guarantee the ultimate benefits, there is no risk arising for beneficiaries. If the deterioration of assets or the financial situation as a whole was caused by market conditions or biometrical risk, supervisory actions can only be the same as management actions: raise contributions, lower accrued rights or benefits.	
46.	The effects of risk mitigating mechanisms of each pension scheme constitute the need of a holistic assessment of the need for recovery plans. Therefore IORP II must provide new definitions for the triggers of recovery plans. The content must be amended: instead of an assessment of reinsurance	

	the assessibility and effects of the pension schemes risk mitigating mechanisms have to be assessed. Article 142 of Solvency II is therefore not appropriate. Estimates of management expenses and estimates of income and expenditure in respect of direct business are not relevant for an IORP. We would rather have recovery plans based on long term asset-liability projectiions, taking into account the benefits to be paid, the expected contributions and returns, and the policies adopted by the IORP for these items, wherbye policies based on taking more risk should be disallowed. All of this should be part of a flexible supervisory approach.	
47.	In most member states IORP's are operated or controlled by the social partners or the representatives of the members and beneficiaries. They are not commercial financial institutions, because their aim is not selling investments in a market, but providing social protection to their beneficiaries. This control structure and this objective, combined with good governance rules and the obligation to invest all assets in the best interests of the members and beneficiaries, constitutes a strong mechanism to make sure that investments are done in a sound way. Investment rules should be consistent with the retirement objective of the IORP, and should therefore be based on the future liabilities and on the asset-liability context, with appropriate internal risk management procedures. IORP's are important long time investors, and are important suppliers of risk-bearing capital. This should remain, and investment or prudential rules should not interfere with this role. In this respect, more macro-economic analysis on the role of IORPs for the EU economy is desirable.	
48.	The prudent person principle constitutes a qualitative investment basis. It is up to the pension fund to decide on differentiation in investment policies. Different investment policies in pension funds come from the different composition of IORP's and/or the different pension promises they manage. AEIP favors a principle based supervision rather than quantitative requirements, although some too risky situations should be avoided. Therefore some mandatory quantitative requirements such as investment in the sponsor company can be imposed. The limit on investments in foreign currencies needs to be clarified.	
49.	As the directive should limit itself to the prudent person principle , it should not impose to have	

	different investment rules for defined benefit and defined contribution schemes, although differentiation should be allowed between defined benefit and defined contribution investments. The prudent person principle should be the basis for all types of schemes.	
50.	Investment rules and restrictions are part of an prospective control to ensure prudent and careful investment behaviour. They are common for a very long time in many European countries and form the basis of their rules-based supervisory systems. A choice has to be made between a security system based on principles and one based on rules. A hybrid system with both elements must be balanced very carefully. Otherwise it tends to be overprotective and could cause heavy costs for fulfilling the principle-based security system without having the means to invest in high-return assets to earn these costs. If member states decide to impose investment rules as a control, their risk mitigating effects have to be taken into account within the holistic approach. Requiring a pension fund to sell immediately the riskiest assets when reaching a certain value at risk threshold may lead to massive distortions concerning the strategic asset allocation of IORP's. Instead supervisors should leave IORP's the choice how to de-risk a threatening situation and finding a prudent position. All security elements described above and the asset-liability situation should be taken into account concerning the decisions. Requiring pensions funds to take all risks into account and operate a prudent asset-liability management ensures that biometric and inflation risks are dealt with accordingly. Therefore no particular investment rules are required. With respect to the geographical criterion, we find that art. 18(1)(e) is sufficient. Regarding art. 18 (1) (f), we agree with the present text. We agree with option 3 about introducing material elements of art. 132. We suggest to keep Art. 18(7) but to improve the wording of the current article to clarify	

	the scope of these rules. Art. 18(5)(c) can be: deleted. We don't agree on the introduction art. 132(3) as there are too many differences with IORPs structure. We share EIOPA advice that no specific rules for investments for biometric and inflation risk are needed. We don't think that additional supervisory involvement on multifunds is needed, we prefer to leave the IORP directive unchanged. Authorities can already control using current powers.	
51.	We agree that borrowing should only be allowed when it is used for risk management purposes and for hedging of liabilities. Subordinated loans should be exempted from the prohibition of borrowing.	
52.	AEIP agrees with EIOPA advice on art. 136 and 141.	
53.	AEIP agrees with option 3. The wide variety of pension systems and the principle of proportionality should be taken into account.	
54.	EIOPA has correctly assessed the impact of an adoption of the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability to IORPs. Concerning the transparency rules we would like EIOPA to take potential additional burdens for IORPs stemming from supervisor curiosity into account. These should be avoided because every excessive transparency could diminish the value of the pension scheme.	
55.	We think that supervisors have already this power to ask for stress tests under the current IORP Directive. AEIP wants to underline again that the operation of an IORP is fundamentally different from an insurance company. As a consequence we believe that if a supervisor considers it necessary to have a stress test conducted by the IORP, it should be a tailer made stress test wich takes in consideration all the particular characteristics of an IORP as well as the principle of proportionality.	
56.	AEIP thinks that it is not needed to reinforce the sanctions regime for IORPs. A tight follow up can be an effective support to a principle based supervisory regime. We oppose however administrative penalties.	

57.	AEIP thinks that the public knowledge of penalties could be made proportional. Supervisors should restrict knowledge if penalties had to be inflicted for the first time. Repeat offenders within a given timeframe should be treated accordingly, this contains public disclosure.	
58.	Giving the host state power to impose sanctions goes against the principle of home state supervision. If a host state could impose direct sanctions against the IORP that is established in another state, this would not only lead to an extra overhead cost, but possibly also to contradictive messages and requirements from the different supervisos to the same IORP. An updated Budapest protocol should stay the basis for the collaboration between supervisors. Possible differences in interpretation should be resolved within EIOPA, taking in consideration the unique comptetence of the host state on its social and labour law.	
59.	AEIP would have no objections or comments against the application of art. 36 of Directive 2009/138/EC if the model in place is significantly different from the one applicable to insurance companies under Solvency II. IORPs need a proper supervisory review process that takes their specificities, diversity and their own characteristics into account.	
60.	AEIP opposes the idea of imposing capital add-on requirements on IORPs similar to those applicable to insurers. A capital charge does not improve the situation of IORPs nor is it an incentive to avoid supervisory actions. Capital charges add costs. In insurance companies add-on are (ultimately) paid by the shareholders instead of the members/clients. An add-on in case of an IORP would ultimately be paid by the plan members and the beneficiaries. This would hamper the protection of members and beneficiaries. If add-ons would nevertheless be introduced, these should be of negligible importance and should only be used as an last remedy in case of in advance defined specific situations.	
61.	We agree that the material elements of Article 38 (1) of the Solvency Directive in respect of supervision of outsourcing should apply also to IORP's.	

	We would like to draw the attention on the possible conflicting situation between the requirement of acces to all information by the supervisor even with all the outsourced activities and the eventual (legally required) profession secret, e.g. in the case of a lawyer who is appointed as compliance officer. We would like to draw also the attention on the consequences of applying article 38 (2). Service providers would have to deal with other supervision than that of the state where they are established, even with more than one foreign supervisors when the service provider operates internationally. This could be solved by making the supervisor of the state where the service provider is established an acting agent for the supervisor of the state where the foreign IORP is established.	
62.	We support EIOPAs proposals concerning changes to the definition of home state and rules on chain outsourcing.	
63.	We agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality. We would like EIOPA to conduct an impact assessment in order to gain knowledge of the real impact of the new requirements AEIP thinks that a number of governance requirements could be applied through the revision of the IORP directive: a) The system of governance which shall provide sound and prudent business management. Paritarian organisations are well prepared to fulfil this requirement because they are owned by their stakeholders and their board (and/or other bodies) consist of representatives of these stakeholders. As the complex system of governance that requires risk-management, compliance, internal audit and actuarial functions for smaller paritarian institutions are difficult to implement, cooperation and outsourcing of all these functions should be possible. b) Transparent organisational structure with clear allocation and appropriate segregation of responsibilities. Again, in the respect of the proportionality principle, already the solvency II	

	framework allows smaller and less complex undertakings to carry out more than one of these functions by a single person or organisational unit. c) Written policies in relation to risk management, internal controls and internal audit. d) AEIP recommends contingency plans to be taken into account. We would like to invite EIOPA to conseder a transition period when implementing the new rules.	
64.	EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements. A proper impact assessment regarding the efficiency and the effectiveness of such new governance rules to IORPs seems necessary.	
65.	AEIP disagrees with EIOPA on the proposal tahat the same 'fit and proper' requirements have to be applied as for insurance and reinsurance undertakings foreseen in Art. 42 (1) of the Solvency II Framework Directive AEIP agrees that persons who direct the undertaking have to possess an adequate professional qualification, knowledge and experience ("fit"), and be of good repute and integrity ("proper"). AEIP agrees that a pensionprovider has to have sufficient knowledge, must be reliable and apt to fulfil his/her tasks. A number of principles should however be taken into account : • The requirements have to be linked to the nature and the content of the pension schemes managed, and the complexity of the activities and the investments. • Professional qualification, knowledge and experience may be acquired by representing the members of pension schemes.	

	• Fitness of non-executive board members or members of a supervisory board should be easier to gain than fitness of executive board members. • The "fit" rule (knowledge and experience) should be applied at the level of the board, which should have the necessary qualification, knowledge and experience as a whole. • "Key functions" should be defined on level 1 and should be consistent with the rest of the regulation insofar as it should be clarified that the amount of key functions and separation of duties depends on the size and complexity of the IORPs operations. Furthermore the qualitative requirements of key personnel should not prevent IORP to establish these kinds of position. Taking these into account, AEIP thinks that the current Art. 9 of the IORP Directive can be amended. A proper impact assessment seems necessary to validate that these requirements are proportional towards different types of IORP.	
66.	Under the condition that the proportionality rules will be applied properly, AEIP agrees. 'Fit and proper requirements' should apply at all times and effective procedures and controls should exist to enable supervisory authorities to assess fitness and propriety. Supervisory authority should be granted advisory powers on the nomination of a candidate before such nomination is decided within the IORP. This can be done by asking the IORP to complete a standard questionnaire on the fitness and propriety of the candidate, to be sent to the supervisor who needs to provide the IORP with its advice on the nomination of the candidate. This will avoid the need for an ex-post intervention of the supervisor.	
67.	Experience shows that today supervisors have all the powers needed to react accordingly if they think that fit and/or proper requirements are not fulfilled or not fulfilled anymore. Therefore AEIP	

	does not see the need for an amendment of any legislation. If there would be an amendment, which would be the criteria on which supervisors would assess an ongoing fitness and properness and when do they judge them as not being fulfilled any longer ? Is it a legal conviction of a certain degree or is completely left to the discretion of supervisory assessment? In case there would, although we don't support this, come a change in the rules, we suggest that the trigger events would be described in detail.	
68.	All IORP's should have an effective risk management system but as the nature of the risks, the size of IORP and its complexity might differ, the qualitative measures and requirements should be in proportion to the risk profile of the IORP (proportionality). An appropriate period of transition will be needed, in order not to have a negative impact on the activity of pensions schemes.	
69.	We agree with the principle that IORPs have to face all risks and to protect themselves. ORSA can be a tool, but the same functions can be done by risk management and capital requirement if calculated taking in account long period trends. In any case ORSA should be applied proportionately to the nature, size and complexity of IORP's. Then the prospective view of ORSA seems to make it an useful part of pillar 2. But there are two aspects to take in account: 1. Art. 45 (1) deals with capital requirement almost only. This is inappropriate for pension funds that do not bear the risks alone (as mentioned above more than once). This subparagraph cannot be transferred to IORP II. 2. Since ORSA is a time-consuming and ressource-intensive process and the security mechanisms of IORPs very often consist in a variety of legal and contractial constructions ORSA should be divided in a full assessment, done on a 3-year-timeframe and a lighter assessment based on the more volatile aspects of security, e.g. liquidity calculations, done on yearly basis.	

70.	Based on the conditions as laid down within answer 69 the scope should be the same. The impact will be additional costs. Charging IORPs of costs that are not useful without any real return in terms of security and efficiency must be avoided. Therefore the proportionality principle must be applied appropriately.	
71.	We refer to our answer on question 69. Concerning ORSA we cannot see any differences between a security regime that would be based on the holistic approach approach or one that is not based on that approach.	
72.	AEIP is in favour to give the compliance function the right to act as whistle-blower. In that case appropriate protection must be provided. We do not thing that whistle-blowing should be the duty of the compliance function, because this would create a potential conflict of interest and impede the advisory role the compliance function has towards the Board of the IORP.	
73.	AEIP agrees that the compliance function should include all legislation relevant for IORP's.	
74.	Internal Audit Requirements could be applied to IORP's, respecting the proportionality principle and with an appropriate period of transition. The level 2 implementing measures should take the International Standards for the Professional Practice of Internal Auditing provided by the Institute of Internal Auditors (IIA) into account. We think that it should also be possible to have the internal audit function outsourced. As far as the independence and quality of the control are guaranteed, the exact specificities of such an internal audit function should be left to the discretion of the IORP. The requirement of an internal audit function may be too burdensome for small IORPs or IORPs with little complexity. Therefore we advice to provide for sufficient flexibility in the performance of the internal audit function.	

75.	AEIP is in favour of giving the internal auditor the right to act as whistle-blower. In that case appropriate protection must be provided. We do not thing that whistle-blowing should be the duty of the internal auditor, because this would create a potential conflict of interest and impede the advisory role the compliance function has towards the Board of the IORP.	
76.	We agree with the analysis od EIOPA, especially with 24.5.4. AEIP has no objections or comments regarding the application of art. 48 of Directive 2009/138/EC, although not all of the tasks are applicable to IORPs.	
77.	We agree with the importance of independence of the actuarial function.	
78.	AEIP recognises the importance of an actuarial function, certainly for IORPs managing defined benefit schemes. The need for an actuarial function might be of less importance if the IORP manages only DC type schemes, and bears no biometrical risk. AEIP recognises also the importance of the independence of the actuarial function. Conflicts of interests must be avoided in order to have high standards on protection level and of avoidance of operational risk. Therefore the independence of the actuarial function must be clearly defined. The competence to guarantee the operational independence can be left to the member states. If article 48 of Directive 2009/138/EC would be the basis, it needs to be amended accordingly to be applicable for pension funds (e.g. no choice of customers).	
79.	We agree with with the preference of EIOPA for option 2. With regard to the whistle-blowing obligation as is laid out under 24.5.7, we refer to what we said about this topic regarding the compliance function and internal audit. AEIP is in favour to give the right to act as whistle-blower, not the duty. In that case appropriate protection must be provided.	
80.	AEIP thinks that the starting point should be art. 9 of the IORP Directive, respecting the specificities of IORPs, and not thematerial requirements on insurers in respect of outsourcing.	
81.	We are not convinced that standardization of outsourcing process requirements would enlarge cross border activity.	
82.	Minimum outsourcing contract elements could include: (1) rights & obligations of the service provider	

	and the IORP, (2) confidentiality and security features, (3) timely and accurate reporting and communication of information, (4) commitment of the service provider to grant access to information by the IORP and the supervisor on an ongoing basis, (5) defining of applicable laws and regulations, (6) defining auditing rights (by both the internal and the external auditor and possibly also by the compliance officer), (7) requirement of an internal controls certification (8) possiblity to modify and/or terminate the agreement and obligation for the external service provider to return all necessary data to the IORP and/or to transfer them to another external service provider.	
83.	IORPs have specific objectives, social responsibilities, investment policies and governance structures that are not at all comparable to AIFM and UCITS. Therefore there is no need for a compulsory appointment of a depositary for IORPs. We propose option 1 and leave the IORP directive unchanged.	
84.	The increase of costs will be translated in higher contributions or lower benefits. In the interest of the participants there is no need for amending the IORP Directive regarding this matter.	
85.	We refer to the two previous questions.	
86.	It is difficult to asses the consequences. We expect that the costs related to a written contract, the role in terms of safekeeping and the oversight functions will be high. The liability of the depositary will increase protection for the IORP but might lead to fee increases. We support the idea of having conflict of interests rules.	
87.	It will be difficult to establish a general rule, because the need for oversight functions that should be performed by a depositary is dependent on the structure of the IORP and the type of scheme it manages. The governance structure and social responsibilities of the IORP require already the performance of a tight oversight function. Depositaries should not be asked to duplicate tasks that are already performed by the IORPs.	
88.	We refer to our answer on question 83.	
89.	AEIP believes the analysis of the options convers most of the pros and cons. We wish to underline the importance of the extra cost burden, which may have an impact on the pensions in those member states where the costs of supervision are at the charge of the IORP's.	

90.	Since there exist huge differences between IORP's and between the pension shemes they manage, in and between the different members states, AEIP believes that a convergence of provision of information to supervisors mays be only interesting in certain fields.	
91.	The EIOPA ideas have a lot to do with consumer protection. AEIP believes that this starts from a wrong assumption. It assumes that pension funds are commercial operators providing a product, and scheme members are consumers of this product. We would like to stress the fact that pension funds are very often not for profit organisations that do not compete on a market. The benefits managed by IORPs are not simple products. They are in most cases mandatory because they are part of collective labour agreements in industry sectors, or because they are part of the employment relation between en employer and his employees. They are as such not consumer products that are consumed. In these cases they do not need as many "pre-contractual information" as customers of insurance companies. Even during their membership their information needs are different from insurance, because the contributions paid for them by their employers are an unchangeable part of their salary. AEIP rejects the approach that collective pension scheme members are to be considered as consumers. The information requirements as are laid down in Solvency II may fit customers and stakeholders of insurance companies. They are far too heavy for IORP's.	
92.	AEIP believes in the introduction of a KIID-like document for DC schemes, adapted to the specific situation of IORPs and containing information beyond investment information. (i.e. a more general KID or Key Information Document). The purpose should not be comparison between IORP's. The objective of the KID should be to provide for a better understanding of the member of his pension accrual under a DC scheme. The information need will be different according to the type of scheme : collective or individual. It might also be driven by social and labour law requirements, imposing elaborate and specific information requirements.	

	Therefore it will be difficult to draft a common format of pre-enrolment document and annual benefit statement, because of the differences in the members states' pension schemes and the specific information requirements based on the national social and labour legislation. The implementation of the principles regarding information requirements as provided in the current IORP Directive can best be decided at a member state-level. AEIP thinks that it should be made clear that this KID is not a source of legal commitments.	
93.	Risk/reward profiles and/or the time horizon of different investment options can only be based on assumptions, and there will allways be a risk premium and an unpredictable outcome involved. It should in any event be made clear that the information does not contain any guarantees as to risk and/or performance. AEIP suggests that the directive should not go into too much detail, but rather leave room to member states to regulate further.	
94.	AEIP believes that scheme members should receive ample information on their rights. The information should however be adapted to the type of scheme.	
95.	AEIP agrees with EIOPA's analysis.	
96.	AEIP believes that the additional information requirements as proposed by EIOPA will indeed lead to additional compliance costs for IORPs and additional supervisory costs for supervisory authorities, which might ultimately be reflected in a charge towards the IORP. AEIP would therefore urge for a proportionality between the additional information requirements (mostly for DC schemes) and the additional costs they would lead to.	