	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**
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	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	**General Remarks** According to the Call for Advice, the European Commission's pensions policy seeks to "ensure the sustainability of public finances and an adequate retirement income." The Commission claims that the Single Market "can reduce the cost of financing pensions by allowing for further efficiency gains through scale economies, innovation and diversification." Finally, the Commission asserts that "the best way for the Single Market to support fiscal sustainability and pension adequacy is through the facilitation of cross-border activity and the development of risk-based supervision."[1] Though we agree that the overarching policy objective in the area of pensions is to	

[1] Call for Advice from the European Insurance and Occupational Pensions Authority (EIOPA) for the Review of the Directive 2003/41/EC (IORP II), European Commission (2011)

ensure an adequate retirement income for citizens whilst maintaining the integrity of public finances we disagree with the Commission on the means to achieving this.

In view of the fact that necessary pension reforms in many countries means the scaling back of government provision, the foremost priority should be ensuring wide scale coverage of supplementary pensions. Cost efficiency of private provision will be enhanced if it is carried out by IORPs, which are very often non-profit seeking, have lean processes and management structures, and are often subsidized by their corporate sponsors through the provision of staff resources and expertise (HR/Treasury). Enhancing the "user-friendliness" of regulation rather than imposing ever more onerous requirements would be a first step to encouraging more occupational provision. In this sense, any review of the IORP-Directive must be accompanied by a thorough impact assessment which would include the effect on coverage levels of occupational pensions.

Scale economies are important but not necessary at the IORP level. A large corporate with a small IORP may achieve the same level of efficiency as a large IORP simply through the bargaining power of the corporate. Large scale consolidation may have the undesirable effect of reducing diversification, thereby increasing the exposure to systemic risk.

In any event, it would be socially undesirable if the review of the IORP Directive reinforced the trend to more DC plans.

Given the diversity of State pension systems, employment practices and taxation regimes across Europe it is difficult to see how the facilitation of cross-border activity of IORPs could be one of the best ways for the Single Market to support fiscal sustainability and pension adequacy.

On the other hand, facilitating the development of risk-based supervision seems a legitimate goal, however, we would argue that the Commission's aim of achieving "a level of harmonisation where EU legislation does not need additional requirements at the national level" is unnecessary and counter-productive. This notion does not adequately reflect the high degree of diversity of pension systems in Europe and the special role that social and labour law play in protecting members' interests. Given this situation, it would make sense to maintain the character of the existing IORP Directive as one that sets out minimum standards which can be augmented at the Member State level. For this exercise and as had been announced, the existing IORP Directive should have been taken as a starting point, rather than the Solvency II Directive which addresses different needs and requirements.

The Solvency II Directive's main objective is to strengthen consumer protection in the absence of a third party guarantor or lender of last resort. For IORPs, which are sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the relevance of Solvency II is questionable. In short, IORPs and insurers play on different fields.

Risk-based supervisory regulation yes, risk-based capital requirements no

The fundamental premise in the Call for Advice is that supervisory regulation should be risk-based. This concept is extended to imply that capital requirements should also be risk-based. We disagree with this conclusion. We believe that it is possible to adopt risk-based regulation without the necessity to impose risk-based capital requirements.

	Firstly, occupational pension systems are, in a sense, self-regulating in that it is the sponsor's utmost priority that pension obligations are funded in the long-term and that contributions to the scheme are stable. Consequently the employer has a vital interest in an asset allocation which is adequate in view of the risk structure of the pension liabilities. This is the basic idea of the Asset-Liability management. Companies whose pension costs are unpredictable and erratic are severely punished by the capital markets. It is, therefore, in the employer's interest to ensure that the IORPs risk/return profile leads to stable contributions. This objective translates into a benefit design and asset allocation that precludes excessive risk. In effect, the risk profile of the IORP is calibrated to the risk the sponsor is willing and able to bear (i.e. the sponsor's risk budget). Secondly, Minimum funding requirements, imposed by the regulator, introduce a further element of employee protection. These are inherently risk-based as the probability of having to make up a short-fall is proportionate to the risk of the scheme. Introducing capital requirements that are risk-based (i.e. the higher the risk, the higher the capital requirement) is unnecessary and, we would argue, increase the risk of the scheme and, therefore, the risk to the member. First of all, as outlined above, risky assets already have a "charge" against them in the sense that they consume a higher proportion of the risk budget. Imposing an additional charge is unwarranted and will disproportionately reduce the IORPs incentive to invest in assets which would otherwise provide an attractive long-term return or act as a diversifier of risk. The same applies to liability risk. Identifying, quantifying and modeling duration and longevity risks is an important part of the risk management process within IORPs. These risks consume i.e. place a charge on the risk budget. Imposing an additional capital charge is doubling up and, therefore, *superfluous*. To highlight why imposing risk-based capital charges could, in fact, increase risk,	

	consider periods of high capital market volatility, such as the present. High capital market volatility increases the risk of underfunding. If, at the same time, the capital requirements also increase, the sponsor will be exposed to a double whammy increase in contributions to the scheme. This may coincide with a period of economic stress in the real economy to which the sponsor's business may also be exposed. This will be compounded by the additional cash contribution requirement to the IORP as well as the negative outlook on the sponsoring enterprise expressed by analysts and rating agencies. In the end, not only is the member exposed to the risk of the scheme becoming unaffordable to the employer but also the risk of becoming retrenched should the enterprise suffer as a result.	
1.	The AbA agrees, in principal, with the analysis as laid out in this advice. We believe there is an important link between the scope and the main objective of the Directive. As described in our answer to CfA 8, the objective of the IORP II Directive can be formulated as follows: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries." The definition of the "institution for occupational retirement provision" in Article 6 (a) IORP Directive is appropriate. Therefore the IORP II Directive has to focus on IORPs established by an employer and/or where the employer plays an essential role in the funding of the IORP. The IORP Directive is not the appropriate EU framework for non-occupational pensions. We propose that the issues that may arise in connection with the application of Article 4 of the IORP Directive and the entry into force of the Solvency II Directive	

	(see section 4.3.20) could be solved by abolishing Article 4. Those Member States that wish their insurance companies or investment companies to conduct pension business could simply require them to establish a separate legal entity in the form of an IORP, to which the IORP Directive would then apply. The dividing lines between 1st, 2nd and 3rd pillar" should be clarified (4.5.). We support the EFRP who strongly encourage EIOPA and the Commission to adopt a typology or taxonomy of European pensions before further regulating this area.	
2.	No.	
3.	The AbA prefers Option 1 ("leave the IORP Directive unchanged") and strongly opposes Option 3. We believe that the IORP II Directive has to focus on all IORPs (as defined in Article 6 (a) IORP Directive) established by an employer and/or where the employer plays an essential role in the funding of the IORP. In addition, prudential supervision of IORPs is but one component of the overarching objective of providing adequate, safe and sustainable occupational pensions. That means in particular that there can be safe occupational pensions being excluded from the scope of the IORP Directive. Book reserve schemes are correctly excluded as the Directive's purpose is to provide a framework for the prudential supervision of institutions that fund retirement benefits. Book reserve schemes, at least in Germany, are provided by employers who are subject to social, labour and tax law but not prudential law as entitlements are secured by a nation-wide insolvency scheme (Pensions-Sicherungs-Verein). The same is true for Unterstützungskassen, institutions whose beneficiaries have no legal rights to benefits and whose sponsoring employer can redeem assets at any time and not necessarily meet its	

	obligations for payment of retirement benefits.	
4.	Not in Germany (in addition see answer to question 3)	
5.	We agree that there are many reasons (see sections 5.3.3, 5.3.4, 5.3.5 and 5.3.5) for the limited role of cross border schemes. However, we also believe that a more consistent interpretation of what is cross border activity may be reasonable. We, therefore, prefer Option 2 and agree with EIOPA's suggested amendments to Articles 6 (c) and (j) of the IORP Directive. With respect to Article 6 (c), we have interpreted the last part of the definition after "**or**" to mean that a sponsoring undertaking may have a statutory or legally binding obligation to fund the scheme in the event of a funding shortfall but it also may not. We also agree that Article 20 of the IORP Directive may have to be amended, however, we would like to see further clarification of instances where the social and labour law of a third country would be applicable. We believe these instances would be very rare, however, should they occur, the prudential authority of the third country member state should, as a last resort, after all other channels have been exhausted, have the ability to effect puniary action against the IORP.	
6.	The current wording of the IORP Directive lends the term "ring-fencing" different meanings in different contexts. We believe it is desirable to clarify the term in order to avoid misunderstanding. Unfortunately, the EIOPA advice does not clearly define the principles referred to in the question, therefore we assume that points 5-11 in the box under 6.5 are meant. In principle, we are of the opinion that ring-fencing should be avoided as far as possible. Ring-fencing can stand in the way of achieving efficiencies through scale	

	economies and inter- as well as intra-generational risk sharing, which we see as core objectives of IORPs. Nevertheless, we acknowledge that ring-fencing may be necessary in order to be able to comply with social and labour law, in particular when it comes to the calculation and distribution of surplus funds/conditional indexation and the like. Whether administrative ring-fencing would be sufficient in these cases is not yet clear to us.	
7.	Whilst we agree in general with the analysis of the positive and negative impacts of ring-fencing, we would highlight that there is too high a focus on member/beneficiary protection and not enough on the objective of facilitating efficient management of IORPs. In a system where beneficiaries are protected by social and labour law, the security level of the IORP is secondary to the objective of facilitating efficient management.	
8.	Firstly, EIOPA does not make clear which type of ring-fencing is meant in the proposals, administrative or patrimony? Assuming this will be defined in each case, our views on the various policy options are as follows: With respect to Article 16.3, we agree with Option 1, i.e. to allow the Member States to decide if and when ring-fencing must be applied in case of cross-border activity. With respect to Article 18.7 we do not agree with the EIOPA proposal. We would want the Member State to have the option to impose ring-fencing. With respect to ring-fencing measures in stress situations we agree with Option 2. Member States should have the option to introduce privilege rules in the national legal framework.	

	No, as is currently the case under Article 18, the Member State should not be obliged to introduce such rules.	
9.	The Member State should not be obliged to introduce privilege rules. These are unnecessary in a system where the employer is the ultimate guarantor. Therefore, we prefer Option 2.	
10.	The AbA agrees, in principal, with the analysis and prefers Option 2. We agree with EIOPA that a clearer definition could facilitate the distribution of competences in cross-border transactions (7.37) but misunderstanding must be avoided. Therefore, we would like to stress: The list in the blue box (Art. 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19; if necessary, supplemented by other articles in the process of the review of the directive) or such a new article in the directive should only help to "determine the scope of prudential regulation as administered by the Home member state for the purposes of cross-border activity". The list should not define the future EU area of regulation trying to achieve "a level of harmonisation where EU legislation does not need additional requirements at the national level" (see CfA). There is a wide variety in the scope of social and labour law amongst Member States and the interaction between social and labour law and prudential law has to be taken into account. Given this situation, it would make sense to maintain the character of the existing IORP Directive as one that sets out minimum standards which can be augmented at the Member State level. In addition, it seems difficult to avoid "concurrent competence".	
11.	There are many reasons (see 5.3.3, 5.3.4, 5.3.5 and 5.3.5 in the context of the Definition of cross border activity) for the limited role of cross border schemes. However, we believe that a clearer scope of prudential regulation as administered by	

	the Home member state for the purposes of cross-border activity may be reasonable.	

12.	As described above, we are of the view that risk-based capital requirements are inappropriate for IORPs. As such, we do not support the holistic balance approach. Moreover, this approach suffers from the problem that it represents a snap shot or point in time view of the financial position of an IORP. Especially considering that the holistic balance sheet will be based in large part on market valuations, this snap shot may not be representative of the longer term evolution of the IORP. And yet, decisions impacting the IORPs viability would be based upon it.
	
	The central assumptions underlying the holistic balance sheet approach are taken from the Solvency II model i.e. market consistent valuation of assets and liabilities, one year time horizon, 99.5% confidence level etc. These assumptions would lead to the following effects on existing IORPs in Germany:
	
	• Extremely high own fund requirements resulting from
	  ○ duration gap (mainly due to lack of appropriate long-dated securities) and
	  ○ historically low interest rates (which may not necessarily reflect economic fundamentals)
	• Extremely high volatility of own fund requirements due to
	  ○ valuations based on point in time market values
	  ○ currently high capital market volatility, in particular, interest rate volatility
	
	In the current environment where interest rates are kept extremely low due to	

	artificially low reference rates and exceptional quantitative easing measures, a Solvency II approach would lead to unaffordable capital requirements. This cannot, objectively speaking, be considered risk-oriented. The holistic balance sheet approach draws on an unmodified Solvency II Directive as a "suitable starting point" and merely incorporates the employer covenant and pension protection schemes as additional assets used to cover the market value of liabilities. This means that a reasonable holistic balance sheet model implies that the value of the employer covenant (backed by the pension protection scheme) will have to be determined by the gap it is supposed to fill. This will be the gap between the financial assets on the one hand and technical provisions plus solvency capital requirements on the other hand. If the accounting profession adheres to the principle of prudence, this inevitably resulting shortfall will likely find its way into the financial statements of sponsors and/or pension protection schemes, thereby creating a circular reference and, as a consequence, systemic risk. The current distinction in Article 17 between the various IORP types has lead to the situation that IORPs in only 3 member states are subject to own fund requirements (CEIOPS 2009). In the case of Germany, most IORPs are subject to own fund requirements even though they, or more accurately, their members have recourse to the sponsoring employer in the event the IORP should fail. It does not make sense to introduce new capital requirements that would only affect 3 member states, as regulations in these 3 countries are currently more than adequate.	
13.	No, we do not agree that assets of IORPs should be valued on a market-consistent	

	basis. There is considerable evidence that markets are not efficient and, hence, market prices deviate substantially from fair value (Woolley 2010). For example, if current prices of German Bunds were fair, then there would be no rational reason for people to save and we could do away with IORPs altogether. Even those involved in defining the implementing measures for Solvency II seem to have come to this realization given the number of adjustments (ultimate forward rate, counter cyclical premium, illiquidity premium, equity dampener etc.) that have been introduced to the model to counteract market inefficiencies, without reaching the logical conclusion of doing away with the whole model, altogether. Moreover, any valuation based on a snap-shot view is inappropriate for IORPs that have extremely long-term liabilities and whose purpose is to provide equitable outcomes across generations. In particular, this applies to assets that are held to maturity.	
14.	We are of the view that the valuation of liabilities on a market consistent basis is inappropriate for IORPs as is the valuation based on the concept of transfer value. The valuation of liabilities needs to accommodate the fact that the purpose of an IORP is to finance long-term commitments by taking advantage of long-run asset returns. If this cannot be done using long-term valuation assumptions, then the whole purpose of an IORP and its ability to capture long-run returns is put into question. We disagree that the transfer value concept has a valid theoretical basis. In practice there is no market for pension liabilities. And in addition we believe that there should be no market. Even the theoretical basis is flawed, as IORPs are designed to engage in intergenerational risk-sharing. This core purpose of an IORP cannot be achieved if it must at all times cover the transfer value of existing liabilities. In the	

	event of a change of ownership of the plan sponsor, it is up to the acquiring company to decide whether they want to be compensated for an amount that would represent the transfer value. In our opinion, there is no need to anticipate a change of ownership in advance, as the frequency of this event happening is very low. Locking away valuable investment capital in low interest bearing securities for this purpose would be a very inefficient use of capital.	
15.	Notwithstanding the fact that we do not agree with a market consistent approach to valuing liabilities, we are the view that taking the credit standing of IORPs into account when valuing liabilities leads to the absurd outcome that the lower the creditworthiness of the IORP, the lower are its liabilities. In any event, this approach would seem rather theoretical as most IORPs are unrated.	
16.	In principle, supervisory valuation standards should be compatible (but not necessarily identical) with accounting standards in order to avoid conflicting management objectives. It should be noted, however, that not even international accounting standards are consistent. For example, IAS 26 (financial statements of the pension fund) and IAS 39 (financial instruments held by corporates, banks and insurance companies) allow matching or held to maturity investments to be shown at redemption value and amortised cost, respectively, rather than market value, whereas IAS 19 doesn't. This question should, therefore, make clear which accounting standards are meant (local, IAS 19, IAS 26, IAS 39?). Secondly, we would reject any accounting standards which are based on mark to market valuations, as these are inappropriate for IORPs. If a solvency balance sheet were introduced in Germany that deviates from the	

	valuation approach used by local accounting standards, either by using mark to market valuation or self-defined stress parameters, this would lead to major adjustment requirements that cannot be accommodated and would lead to the demise of IORPs in Germany.	
17.	As outlined above, we do not agree that a market consistent valuation of liabilities is appropriate for IORPs and, therefore, would favour keeping Article 15 of the IORP Directive.	
18.	As outlined above, it is not appropriate nor economically efficient to incorporate a risk margin in the valuation of technical reserves as a provision for the compensation of a potential future "buyer" of the liabilities. In the event of a change of ownership (employer), it is up to the two parties to agree on a price that is fair at the time. In our opinion, there is no need to anticipate a change of ownership (employer; no change of IORP ownership takes place in a mutual undertaking, even if the sponsor company receives a new owner) in advance, as the frequency of this event happening is very low. Locking away valuable investment capital in low interest bearing securities for this purpose would be a very inefficient use of capital. We also reject the inclusion of an explicit risk margin in the valuation of liabilities. The valuation assumptions, as determined by the Appointed Actuary, should reflect long-term expectations and be prudent. These may need to be changed from time to time if experience differs significantly from the assumptions, but frequent short-term changes to the assumptions lead to volatile funding requirements that are neither in the interests of the sponsoring employer nor the members. We would, therefore, favour keeping Article 15 of the IORP Directive.	
19.	Whether future accruals should be taken into account depends on the actuarial	

	method chosen. In these cases, the actuarial method also allows for future contributions as an offsetting position (principle of equivalence). The actuarial method to be used should be determined by the Appointed Actuary as it is a function of the nature of the scheme (plan provisions, vesting mechanism, open or closed to new members etc.).	
20.	Yes, the AbA agrees that liabilities should be calculated gross without any amounts recoverable from insurance contracts.	
21.	The AbA is opposed to both options presented by EIOPA. The use of a market consistent yield curve, whether risk-free or "modified" risk-free leads to results which are too volatile to be useful for the management of an institution that covers long-term obligations spanning generations. Moreover, the specification of a particular yield curve in the implementing measures runs the risk of being the object of a political horse-trade, and therefore, not being reflective of the underlying liabilities and risk-structure of the IORP.	
22.	Establishing provisions for future administration expenses incurred in administering accrued benefits is sensible and prudent. This also corresponds to current practice in Germany. However, if the employer carries the administration cost this must be taken into account in a lowering way.	
23.	We believe that only unconditional benefits should be included in the technical provisions. It is important for IORPs that the excess returns achieved over and above those required to fund the unconditional benefits should be available as a capital buffer to smooth out fluctuations in experience and to react to adverse market conditions.	

24.	The valuation of pension liabilities is based on a discounted cash flow approach taking into account the weighted probability of benefits arising including various options that members may have (not common in Germany). Benefits that contain financial guarantees are treated just as any other defined benefit as there is no difference in substance. We would not support the use of option pricing models to value these and oppose their itemization in a separate reserve.	
25.	The segmentation of liabilities into risk groups is normally not necessary for IORPs as they display relatively homogeneous benefit and risk structures. Should this not be the case, we suggest that the Appointed Actuary should judge whether a segmentation is appropriate.	
26.	It is reasonable and appropriate for the IORP to account for a receivable from reinsurance contracts and special purpose vehicles when a claim has been made but not yet been paid. It is also appropriate to make an adjustment to reflect the probability that the amounts may not be fully recoverable from the counterparty. This represents current practice at IORPs. Appropriate methodologies already exist for the calculation of this position and should be maintained. As such, it is not necessary to introduce a respective article into the IORP Directive.	
27.	The IOPR has a duty to ensure that data quality is of a high standard. These days, approximations are not widely used, however, they may be necessary in particular instances when benefit structures are complex or the available data is inadequate.	
28.	It is a core responsibility of the Appointed Actuary to regularly compare actual and expected experience factors and make relevant adjustments when necessary. This represents current practice and does not need separate regulation.	

29.	It is reasonable to require IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions.	
30.	There should be no such requirements at EU level. At the national level, should the technical provisions prove to be inadequate, the supervisor should require the IORP to raise the level of provisions after allowing for a reasonable transition period.	
31.	No. We do not agree that methodologies used to calculate technical provisions should be harmonised at EU level. Methodologies at national level have evolved over time to reflect the particular circumstances of IORPs and are often intertwined with social and labour law requirements. Harmonising these would have a major impact on the feasibility of 2nd pillar provision and, therefore, coverage levels.	
32.	As we do not agree that methodologies used to calculate technical provisions should be harmonised at EU level, Article 15(5) of the IORP Directive should be maintained in order for the national supervisors to define implementing measures.	
33.	As described above, we do not agree with the holistic balance sheet approach nor do we agree that risk-based capital requirements are appropriate for IORPs. We believe that own funds are unnecessary in a system where the IORP has employer support coupled with an insolvency protection scheme. Our rejection of the holistic balance sheet approach is based in part on the difficulty in valuing the employer support. Not only would this be a highly complex and	

	therefore potentially costly exercise, it also carries the risk that the sponsor would be required to disclose the value of its commitment in its own financial statements. Such a development would have a dramatic impact on the appetite of corporates to sponsor occupational pensions. Should the Commission nevertheless pursue this matter, we would suggest considering an approach which reflects the complementary nature of the employer support and insolvency protection scheme, which together would create a uniform level of protection across the Member State. As such, this risk mitigating mechanism could be reflected as a uniform factor applicable to all IORPs in the Member State. For employer-backed IORPs with additional PPS, Component 7 should not be interpreted as a calculated (by evaluation) asset position. Instead it has to be interpreted as a flexible compensation position. Regardless of the definition of capital requirements, Component 7 has to be regarded as an asset to fulfil any solvency capital requirement the IORP might face. In any event component 7 has to be qualified as an equivalent to financial assets. In addition, as stipulated in 10.6.22, benefit reduction mechanisms must be allowed to be recognised as lowering impact on technical provisions.	
34.	As described above, we do not believe that risk-based capital requirements are appropriate for IORPs. Moreover, we consider own funds to be unnecessary in a system where IORPs have sponsor support coupled with an insolvency protection scheme.	
35.	Yes. The AbA agrees that subordinated loans from the employer to the IORP should be explicitly allowed in a revised IORP Directive. Subordinated loans can serve as a security mechanism for all types of IORPs. It is understood that these loans should in practice be accounted for at nominal value, therefore, further implementing	

	measures are unnecessary.	
36.	We believe that a uniform level of security of occupational pension benefits cannot be a determined across EU countries due national differences in the way security is addressed. First and foremost, the security of the benefits provided by an IORP is determined by the social partners and, in particular, the sponsor's risk budget. It is also a function of the promised benefit level itself. Backing this are provisions in the social and labour law which are idiosyncratic from country to country and reflect cultural attitudes. It has to be kept in mind that security comes at the price of lower benefits. A further important factor is the relative importance of the 1st and 2nd pillars, which differs across countries. Therefore, we suggest that EIOPA recommend that a uniform level of security should not be pursued at the EU level.	
37.	As described above, we believe that risk-based capital requirements are not appropriate for IORPs.	
38.	As described above, we do not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. IORPs are already subject to a risk-based management regime by their external sponsors, who set risk limits according to their ability to make up any funding shortfalls. Further solvency capital requirements in this context are superfluous, costly and will likely lead to a further decline of employers' willingness to offer supplementary pensions. They are also an inefficient use of capital which could lead to an increase in systemic risk.	
39.	As described above, we believe that risk-based capital requirements are not appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level.	

40.	As described above, we do not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. In any event, in a system where there is sponsor support, the possibility of funding deficits with recovery periods, the ability to reduce benefits and the existence of an insolvency protection scheme, the concept of an MCR makes no sense.	
41.	Our rejection of the holistic balance sheet approach rests in part on the difficulty in placing a value on the sponsor support and pension protection schemes. This would be a highly complex and therefore potentially costly exercise. Should the Commission nevertheless pursue this matter, we would suggest considering an approach which reflects the complementary nature of the sponsor support and insolvency protection scheme, which together would create a uniform level of protection across the Member State. As such, this risk mitigating mechanism could be reflected as a uniform factor applicable to all IORPs in the Member State.	
42.	As described above, we do not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. Should the Commission, however, pursue the matter, it would seem reasonable to apply a uniform methodology for determining a capital requirement for operational risk for both DB and DC schemes.	
43.	We believe that the current Article 16 (2) of the IORP Directive is completely adequate in regulating the powers of supervisors in the case of deteriorating financial conditions. Thus, we agree with Option 1 of EIOPA's recommendation.	

44.	We believe that the current Article 16 of the IORP Directive is completely adequate in regulating the powers of supervisors in the case of deteriorating financial conditions. Recovery periods should be determined with reference to the duration of the liabilities and be agreed on with the national supervisor on a case by case basis. For example, an IORP with a young membership and hence long liability duration should be allowed a longer recovery period than an IORP which is closed to new members.	
45.	IORPs should not be restricted in their ability to freely dispose of assets unless the interests of the beneficiaries are in any way endangered.	
46.	We believe that the current Article 16 (2) of the IORP Directive is completely adequate in defining the contents and the process of establishing a recovery plan. Thus, we agree with Option 1 of EIOPA's recommendation.	
47.	Yes, as a basis the prudent person principle, as laid down in Article 18(1) gives all IORPs the necessary flexibility to tailor the investment strategy to the objectives of the scheme and the structure of the liabilities. Invariably the objectives of the scheme will be defined by the sponsor or social partners, who bear the ultimate risk in DB or hybrid schemes. The prudent person principle also gives IORPs the flexibility to adapt the investment strategy to reflect ongoing developments in academic research.	
48.	Yes, although the IORP Directive should make clear that the prudent person principle is a sufficient basis for the investment of IORPs. With regard to cross-border activity, we would argue that the host Member State should not be allowed to impose additional prudential requirements over and above	

	those of the home Member State. The IORP operating in the host country, however, would need to comply with the host state social and labour as well as tax law. This could include mandatory participation in a pension protection scheme. In addition, the IORP should be required to disclose supplementary information to the sponsor with respect to the nature of the prudential requirements to which the IORP is subject.	
49.	The prudent person principle is an appropriate basis for determining the investment provisions of DB, DC and hybrid schemes.	
50.	To the extent that this question refers to 7.10 Specific Call for Advice regarding the valuation of derivatives, we suggest that Article 18(1)(d) IORP Directive be retained, but it should be clarified that efficient portfolio management refers to both asset and liability management. With regard to the question of geographical concentration, we are of the opinion that the prudent person principle in combination with Article 18(e) should prevent excessive geographical concentration from occurring. Further elaborations are not necessary.	
51.	We agree with the EIOPA advice regarding the retaining and clarification of Article 18(2) IORP Directive.	
52.	We do not agree with the analysis regarding the objective of supervision. The Solvency II Directive's main objective (Article 27) is to strengthen consumer protection in the absence of a third party guarantor or lender of last resort. For IORPs, which are sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security	

mechanisms in social and labour law, the objective of Solvency II is not relevant.

Taking inspiration from Recital 7 in the current IORP Directive, we would redefine the objective for supervision of IORPs as follows:

> "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries."

We do not agree with the analysis regarding the measures to avoid pro-cyclical behaviour.

Pro-cyclicality is a direct result of the fundamental use of mark to market valuations of assets, liabilities and capital requirements. Any measures intended to counteract the effects of pro-cyclicality would be merely treating the symptoms rather than the underlying cause. A far more effective means of reducing pro-cyclicality is to avoid the use of mark to market valuations altogether and strengthen the ability of IORPs to take a long term view. This would include provisions allowing for long recovery periods.

Notwithstanding the above, should the Commission decide to go ahead with the use of mark to market valuations, we would want to see all possible methods of reducing pro-cyclicality included in the revised IORP Directive. This includes:

- a provision that supervisors consider the potential impact of their decisions on the stability of the financial systems and to take into account the potential pro-cyclical effects of their actions in case of stress,
  (Please note that extreme stress should not be a necessary condition, as prevention of systemic risk is better than cure.)

	- a provision that recovery periods will be suitably long to allow IORPs to regain financial strength and - provisions that would prevent IORPs from having to force sell their assets.	
53.	Prudential supervision of IORPs is but one component of the overarching objective of providing adequate, safe and sustainable occupational pensions. As described above, this objective can be formulated as follows: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries." We agree that supervision should be based on a prospective and risk-based approach. This does not mean, however, that the measurement of capital requirements should be risk-based. IORPs that implement modern asset liability management techniques are managed by reference to a risk budget. This implicitly attaches risk weights to the various asset and liabilities to which the IORP is exposed. Imposing additional risk-based capital requirement is piling prudence on prudence and will amplify the stress on IORPs in volatile capital market scenarios. With respect to the transparency and accountability requirements, we agree with the principles as laid down in the OECD Principles of Occupational Pension Regulation and the IOPS Principles of Private Pension Supervision and, therefore, generally agree with EIOPA's advice. These principles can be integrated into the IORP Directive without the need to adopt Solvency II terminology. We would want to highlight that the supervisor's obligation to provide transparency	

	and accountability is first and foremost towards the IORP and its sponsor/s. In contrast to the insurance industry, in most cases, individual members cannot choose the IORP, therefore, the supervisor should not disclose information to the public which may be confusing, irrelevant or create a false sense of alarm. The objective of facilitating efficient management and administration should preclude the supervisor from imposing excessive disclosure requirements on IORPs. Finally, we suggest that the supervisor should be required in regular intervals to report on its activities with respect to meeting the objective as we have formulated above.	
54.	In part. We do not agree with the formulation "the need to enhance benefit security". This implies that occupational benefits are in some way less secure than those provided by insurers, which is not the case. The difference between the supervision of IORPs and insurers is that the supervisor also has an obligation towards the sponsor who will ultimately be taken to account for the actions of the IORP. In addition to the above, we would also highlight – in support of the IVS Institut - the following specific aspects of IORPs that further justify a different treatment: 1. **The business model:** The vast majority of insurers (and effectively all of the major players) is profit-oriented and operate in a competitive market. Neither applies to IORPs, whether company-own or restricted to a profession or a pre-specified set of beneficiaries (e.g. members of a profession) alone. IOPRs in this sense do not include those that compete directly with insurers in the pensions market. We believe that this aspect alone justifies that a fundamentally different approach between the two types of entities is more	

appropriate.

2. **Ownership structure:** The vast majority of insurers (and effectively all of the major players) is oriented towards the capital markets, i.e. the shares in the entity are effectively held-for-sale by its owners. In contrast, an IORP is held by a single owner (or its beneficiaries if a mutual structure) and is essentially held-to-maturity, since the entity as such is not publicly traded. It follows that, for measurement purposes, a mark-to-market or fair value approach makes sense for the valuation of an insurer's assets/liabilities. In contrast, for measurement purposes, a fulfilment value or held-to-maturity approach makes more sense for the measurement of IORPs' assets/liabilities. The fact that the owners of those corporate entities holding interests in an IOPP are also effectively held-for-sale does not necessarily permit the conclusion that this requires treatment similar to insurers: the business model, the legal framework, diversity and risk profiles typically differ from those of insurers.

3. **Legal framework:** This aspect is dealt with partly in section 2.6.5. We believe, however, that not all repercussions have been thoroughly considered. Insurance contracts are contracted in a free and open market (i.e. the consumer has a choice) and are therefore subject to contract/civil law because beneficiaries are contract holders. In contrast, in most countries, pension promises are subject to labour law, which can differ significantly from contract law; the consumer is thus generally not operating in a free and open market. In Germany, for example, the underlying contract is generally agreed upon (and amended) by collective bargaining agreements. The individual employee does not give his consent nor can he disagree, even if his rights are reduced.

	The pension promise can be weaker / softer and more malleable in the context of an IORP (for example, in Germany, pension agreements can be and are changed by agreements with employee representatives, not every employee individually - often with legal effect for accrued benefits too). Actuarial valuation principles of liabilities and security requirements for IORPs must thus reflect the prevailing labour and social law and take account of this flexibly over time since labour and social law are not static. In short, insurers generally grant "hard" guarantees while IORPs grant "softer" guarantees. In some member states (e.g. Germany, The Netherlands), most IORPs do not necessarily guarantee benefits at all, since the IORP has the right to reduce the benefits in accordance with the assets available – i.e. "soft" benefit ambitions rather than "hard" guarantees. In Germany, for example, in the vast majority of situations the law requires an employer to underwrite any shortfall not met by the IORPs. This framework is clearly more flexible than that typically applying to life insurers. This flexibility is often justified, to varying degrees, by the existence of an employer covenant. In some jurisdictions there is a further safeguard: should the employer too be unable to fulfil the pension promise given, the promise can be protected by an insolvency protection institution for occupational pensions. Within the context of the holistic balance sheet we understand that EIOPA and the Commission interpret the value of the employer covenant and the	

	insolvency protection as not being assets that can be directly held against the technical provisions but rather only against the SCR and the Risk Buffer. We believe that this approach is not appropriate when viewed in the context of an IORP's characteristics. 4. **Diversity:** This aspect is partly dealt with in section 2.6.7. However, we believe that here too, not all repercussions have been considered thoroughly. There are about 5,000 insurers and about 140,000 IORPs in Europe. As EIOPA quite correctly states, the aspect of relative cost of satisfying any regulatory requirements is thus of much greater significance for IORPs. However, EIOPA does not mention that the types of products offered by IORPs (i.e. pension promises) are far more diverse in nature than insurance products. The combination of this numbers / diversity issue must have a significant repercussion on regulation, since otherwise, diversity will be intentionally extinguished. The result will very likely be that all risk will be shifted onto beneficiaries. This aspect falls firmly into the area of social policy and should not be brushed aside by the Commission as "not our responsibility". 5. **Risk profiles:** Typically, insurance contracts exclude a large number of specific risks (e.g. unhealthy lives), whereas IORPs are more inclusive (because normally all employees are to be covered).	
55.	No. Stress tests are an important component of the ALM process but not as a supervisory tool at the individual IORP level. For the IORP it is important to know how the scheme will develop if the long-term valuation assumptions are significantly under- or overestimated for at least part of the estimation period. The results of this exercise will influence the strategic asset allocation. It must be noted in this context	

	that by law lump-sum payments for example by cancellation of employers or employees are more or less minor exceptions for German IORPs. The system of stress-testing as we know it from the insurance industry is not relevant for IORPs as the investment horizon of IORPs is more than one year, IORPs have sponsor backing and funding targets make allowance for recovery periods. Insurance style stress tests will only serve to promote pro-cyclicality. At the macro level, stress testing can be useful for gauging the potential for systemic risk.	
56.	We believe that Article 14(2) is perfectly adequate in conveying the appropriate powers to supervisors to impose sanctions. Any sanctions regime for IORPs needs to take into account that - prudential regulation is only one part of a web of interacting regulations that govern the security of pension benefits - IORPs are not financial services entities comparable to banks and insurance companies, f.i. due to the close link with the sponsoring employer - the long term nature of IORPs - financial sanctions will ultimately be borne by the members, given that IORPs generally cannot raise capital. As a result, we believe it would be inappropriate to harmonise a sanctions regime across banks, insurers and IORPs.	

57.	We cannot imagine a situation in which financial penalties would be appropriate for IORPs other than in cases of fraud which would be covered under the criminal code and apply to the individual committing the crime. We would welcome further research on this matter. Currently, in Germany the most extreme sanction an IORP can experience before its licence is revoked, is the appointment of a special representative who takes over the management of the institution. We do not believe that publicizing events such as these would add any value.	
58.	We believe that the current Article 20(10) IORP Directive should be maintained. IORPs should have one main supervisor, namely in the home state, with the host state competent authority supervising the IORP via co-operation with the home state.	
59.	We believe that the supervisory review process needs to adequately reflect the objective of the Directive as we see it: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries." It would make sense to outline a supervisory review process in the IORP Directive with this objective in mind. As stated by EIOPA, this process also needs to take due consideration of the value and strength of other security mechanisms of IORPs as well as the diversity of the type, size, complexity and the legal form of IORPs across member states.	
60.	As stated above, we oppose the imposition of risk-based capital requirements on	

	IORPs. This stance also applies to capital add-ons, the cost of which will simply be borne by members.	
61.	The Article 13(b) of Directive 2003/41/EC should be clarified, but we are not convinced that the material elements of Article 38(1) of the Solvency II Directive are the right way forward. The AbA can't support Option 2. The AbA would propose again (see response on the first EIOPA draft) to include in the revised IORP Directive the principle that the IORP remains responsible for the outsourced activities. The consequence of this principle is that the supervisor's first contact point is the IORP and not the different service providers which perform activities for the IORP. In this concept, the IORP will ensure that the supervisory authorities will, on request, have access to information necessary to fulfill supervisory functions with respect to outsourced activities. We do not believe there is any added value of having a Level 1 principle to empower the supervisory authority of the IORP to carry out themselves on-site inspections at the premises of the service provider in case that service provider is located in another member state. Therefore we oppose to the idea to use Article 38(2) of Directive 2009/138/EC in the revised IORP Directive (change of Article 13 (d) IORP Directive), too. In addition, the AbA fails to see the need to introduce special rules or further details on the case the service provider is located in a non-EEA country (see section 17.3.11). We would focus more on due diligence to be performed by the IORP while selecting a service provider. We believe that it is sufficient that "Member States must ensure that supervisory authorities have the necessary powers at any time to request information on outsourced functions and activities". The AbA agrees with EFRP that a written outsourcing agreement is an effective tool facilitating the exercise of supervision in	

	case of domestic and cross-border outsourcing (see 17.3.6). But regulations which would unnecessarily increase bureaucracy, complexity and cost should be avoided.	
62.	The AbA agrees with EFRP that the "home state" should be defined as "the state where the IORP has been authorised or registered" (section 17.4.6). We do not see the benefit of the proposed regulation that the main administration needs to be located in the home member state. Therefore, we disagree with EIOPA's proposal on the location of the main administration (section 17.3.24 and section 17.4.6). Additional rules on chain outsourcing will not increase the level of security of the scheme members. Again, we consider it is the task and responsibility of the IORP to negotiate and control the outsourcing deals, including the impact of chain outsourcing in the agreement. Therefore, we do not believe that additional rules on chain outsourcing are necessary.	
63.	In our response to the Green Paper and the first EIOPA Consultation, we expressed the general view that qualitative guidelines such as those laid down in the BaFin circular MaRisk, with an appropriately modified application of a general proportionality clause, could be a potential governance standard for IORPs. Therefore we support Option 2. The proposed amendment "if appropriate, the governance system should not prevent members' and beneficiaries' participation in the governance structure of the IORP" (section 18.4.1) says implicitly that members' and beneficiaries' participation in IORPs is an exception. That's not true for IORPs. It is important to apply the principle of proportionality to all elements of the governance system of IORPs (e.g. internal control, internal audit, outsourcing), in order to avoid excessive administrative burden for IORPs (see section 18.4.2).	

64.	Yes. The AbA agrees with EIOPA (see in particular section 18.3.21)	
65.	No. We believe that the fit and proper test in Article 9 IORP Directive should be taken at least as starting point for the discussion. We refer to our response on the first draft: It is fundamentally the IORP's own responsibility to ensure that the persons who effectively run the IORP and have other key functions are fit and proper. This responsibility cannot be transferred to the Supervisory Authority. The requirement of "fit and proper" - and the involvement of the Supervisory Authority in assessing this - should therefore remain restricted to management board members only. Extending this to other functions would only lead to increased bureaucratic burden and costs for IORPs and their sponsoring company/ies. This would be especially cumbersome for company IORPs (that do usually not employ own staff / use staff of the sponsoring undertaking to fulfil their duties) with their outstanding cost-effectiveness. We agree with EIOPA that the fitness requirements should "depend on the nature, scale and complexity of the activities of the IORP" (see section 19.3.5). It's important that the Board as a whole have an adequate level of qualification knowledge and experience. Therefore, "the composition and functioning of the whole group of persons who effectively run the IORP" have to be taken into account (see section 19.3.5). The AbA agrees with EIOPA that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs.	
66.	Yes, the EFRP agrees that fit and proper requirements for persons who effectively run the IORP should apply at all times and that there should be procedures and	

	controls to enable supervisory authorities to assess fitness and propriety.	
67.	We agree with EFRP that an ex-post intervention by the supervisor should be avoided. The IORP could be asked to complete a standard questionnaire on the fitness and propriety of the candidate for the IORP board, to be sent to the supervisor who could then provide the IORP with its advice on the nomination of the candidate.	
68.	The AbA agrees to introduce general principles of risk management. We agree with EIOPA that risk management must depend on the IORP's risk profile (see section 20.3.3). We agree with EIOPA that the proposed requirements could significantly increase Nevertheless the IORPs will need an adequate period for implementation. The EFRP agrees with EIOPA's assessment that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs. We reject risk-based capital requirements which are not appropriate for IORPs. Therefore we reject strongly the following proposed wording (see section 21.5.10): Article *XY* *Risk management* *".. 5. For IORPs using a partial or full internal model approved in accordance with Articles 112 and 113 the risk-management function shall cover the following additional tasks:*	

	(a) to design and implement the internal model; *(b) to test and validate the internal model;* *(c) to document the internal model and any subsequent changes made to it;* *(d) to analyse the performance of the internal model and to produce summary reports thereof;* *(e) to inform the administrative, management or supervisory body of the IORP about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses."*	
69.	We prefer Option 1 (The revised IORP Directive should not include ORSA). Its aim will be sufficiently achieved by risk management and security mechanisms. In addition, ORSA is linked to the proposed risk-based capital requirements which we oppose. ORSA for insurers is a very time-consuming and costly process. The main focus of ORSA is the compliance with capital requirements.	
70.	The revised IORP Directive should not include ORSA. Its aim will be sufficiently achieved by risk management and security mechanisms.	
71.	The revised IORP Directive should not include ORSA. Its aim will be sufficiently achieved by risk management and security mechanisms. ORSA for insurers is a very time-consuming and costly process which should be avoided.	

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72.	In contrast to section 12.3.11 of the first consultation (possible for the compliance function "to inform the supervisory authority on its own initiative when necessary"), the current section 22.3.11 (and the EIOPA advice 22.5.5) proposes "an option for the Member States to introduce a whistle-blowing obligation for the compliance function". The AbA rejects strongly the idea that the regulation should make it possible for the compliance function, should it exist, to also inform the supervisory authority. We believe that as a general principle staff of an IORP is responsible to the managing board of the IORP and that the managing board of the IORP is responsible to the supervisory authority. This applies for all required governance functions. Therefore, an option for the Member States to introduce a whistle-blowing obligation may only be acceptable in exceptional particularly serious cases which should be defined on Member State level.	
73.	In contrast to section 12.3.12. of the first consultation, the current section 22.3.11. replaces "all legislation relative to the operations of the IORP" with "all legislation with an impact on the operations of the IORP". The AbA agrees that the compliance function, if introduced after a proper assessment of the costs and effectiveness of such a function within an IORP, could include "reporting and recommending to the administrative, management or supervisory body of the IORP on compliance with the laws, regulations and administrative provisions with an impact on the operations of the IORP" (i.e. including Social and Labour law).	
74.	The AbA agrees with the recommendation of EIOPA to introduce an internal audit function. We agree with EIOPA that all principles of good governance (including internal audit) must be implemented in a reasonable and proportionate manner (section 23.3.5). The internal audit function should report the "findings and recommendations to the competent	

	administrative, management or supervisory body of the IORP" (see section 23.3.12).	
75.	No, we do not agree with EIOPA that the revised directive should contain such an option for Member States (see section 23.5.7). Internal audit is an internal function! We refer to our comments on question 72. The AbA rejects strongly the idea that the regulation should make it possible for the internal audit function, to also inform the supervisory authority. We believe that as a general principle staff of an IORP is responsible to the managing board of the IORP and that the managing board of the IORP is responsible to the supervisory authority. This applies for all required governance functions. Therefore, a whistle-blowing obligation may only be acceptable in particularly serious cases which should be defined on Member State level.	
76.	The AbA acknowledges the importance of actuaries (or similar qualified specialist) and the fact that their advice is necessary. On grounds of cost, the Directive should not require an IORP to have two separate functions to compute and to certify the technical provisions. The actuarial function shall inform the managing board of the IORP and the managing board of the IORP is responsible to the supervisory authority. Therefore, we do not agree with EIOPA that the "reporting obligation should be extended also vis-à-vis the supervisory authority" (see section 24.3.17). Therefore a whistle-blowing responsibility may only be acceptable in exceptional particularly serious cases which should be defined on Member State level. We are in favor of defining the scope, tasks and qualifications of the actuarial function more precisely. However the definition of the actuarial function should be sufficiently flexible to deal with the wide variety of IORPs in Member States. We reject to risk-based capital requirements which are not appropriate for IORPs.	

	Therefore the reference in the adapted wording of article 48 (1) (see section 24.5.5) to Chapter VI, Sections 4 and 5 should be deleted.	
77.	We agree that the requirements of Solvency II could be the starting point for the actuarial function. Particularly against the background of the differences between insurance companies and IORPs (in particular the governance structure and aim of the profit maximization) we cannot understand why the requirements for IORPs (even whistle-blowing responsibility and requirement of independence of the actuarial function) should be higher than for insurance companies.	
78.	The Aba agrees with the importance of the independence of the actuarial function. Nevertheless, the directive should provide that the actuarial function could be carried out by a member of the staff or the administrative, management or supervisory body of the IORP, too. The independence of the actuarial function should be clearly defined in order to avoid any misunderstanding. We agree that the actuarial function should have "operational independence" (see section 24.3.24).	
79.	We do not agree that the proposed standardisation of the requirements regarding the actuarial function would necessarily lead to cross border activity. In addition, the AbA considers the proposed introduction of a whistle-blowing responsibility vis-à-vis the supervisory authority for the actuarial function to be counterproductive. In particular it does not fit to IORPs which often have lean processes and management structures (eg actuarial function is carried out by a member of the staff or the administrative, management or supervisory body of the IORP).	
80.	Firstly, we agree with EIOPA to maintain the general principles on outsourcing stated in the current IORP Directive [Article 9(4), 19(1), 19(2)]. Secondly, we agree with EIOPA that	

	IORPs should remain fully responsible when they outsource functions or activities to third parties (see Article 49 (1) Solvency II Directive). The AbA refers to the comments made under Question 61. However, we accept that "outsourcing of critical or important functions or activities of IORPs should be made subject to certain limitations" (see section 25.3.1). We agree with EIOPA that a limitation to outsourcing in a positive way – in contrast to Article 49 (2) Solvency II Directive – is preferable. Unfortunately, we have not had the time to discuss the principles proposed by EIOPA under section 25.5.2. Outsourcing contracts should especially allow small institutions to implement efficient solutions. Therefore, the process for such contracts may not be complex and costly. The regulations should be established at the national level. In our opinion a Level 1 principle that "Member States must ensure that supervisory authorities have the necessary powers at any time to request information on outsourced functions and activities" should be accepted as sufficient. Therefore, we oppose to apply Article 49 (3) Solvency II Directive to IORPs.	
81.	No, we do not believe that standardisation will have a huge impact on cross border activities.	
82.	The following criteria (on the basis of the BaFin Circular MaRisk VA) could be taken into account and could form part of the contractual outsourcing agreement: - services to be performed by the company to which the activity is outsourced must be specified and where appropriate delineated; - information and audit rights of the internal audit function as well as of external auditors must be determined; - the rights to issue instructions must be clearly defined;	

	- there must be rules that ensure that data protection provisions are taken into account; - appropriate periods of notice must be specified; - it must be ensured that the company to which the activity is outsourced complies with insurance supervisory requirements; - the outsourcing undertaking must inform the undertaking of developments that affect the proper performance of outsourced activities and processes.	
83.	The proposed distinction between IORPs with or without legal personality (in which IORPs with legal personality are treated similar to insurance companies) appears justified. We agree with EIOPA's evaluation that a compulsory appointment of depositaries for IORPs with legal personality is not necessary. As to IORPs without legal personality, in our opinion the proposed distinction between contract and trust based systems is appropriate. On the other hand, the (optionally) proposed compulsory appointment of a depositary in case of DC schemes needs further analysis. A common understanding of hybrid schemes needs to be developed in order to avoid the extension of inappropriate rules to such (already protected) schemes.	
84.	The AbA shares EIOPA’s view that unjustified changes, esp. any unjustified increase of costs for the IORPs, should be avoided.	
85.	In our view, most of the active operating depositaries e.g. in GB, DE, F, I, ESP and Benelux are able to fulfill both functions already, therefore we expect that the economic impact of the proposed safe keeping and oversight functions will be	

	reasonable and in general of minor effect.	
86.	We consider the consequences of the proposed general requirements as acceptable. A list of minimum oversight functions (with application of the proportionality principle) is reasonable. The additional costs cannot be anticipated, as the diversity of IORPs will lead to a significant bandwidth of implementation efforts (from very low at large and more sophisticated organisations to higher and potentially costly outcomes at smaller entities).	
87.	The list appears to be comprehensible and appropriate.	
88.	We believe that custodian/depository systems are required for an adequate separation of assets.	
89.	In Question 59, we expressed the need to define a supervisory review process tailored to IORPs which follows the following objective of supervision: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries." The supervisor should have the power to collect information in order to carry out the supervision process. Therefore, we are of the opinion that Article 13 IORP Directive should be maintained with appropriate amendments to reflect the above objective, the type of scheme involved, the fact that IORPs are linked to a sponsoring employer, IORPs represent less of a systemic risk than insurance companies and are usually provided on a not for profit basis. It is understood that the principle of proportionality will be recognized at all times.	

90.	We believe that convergence of information provision in certain fields is necessary for EIOPA to be able to assess the level of systemic risk. For this purpose the IORP Directive was amended (Article 13(2)) to give EIOPA the power to define the standards for the presentation of information. Full convergence is not possible due to the diversity of arrangements in the EU.	
91.	No. We believe that the information requirements in the current IORP directive are sufficient. In particular, we agree with EIOPA that "information should be provided to members/beneficiaries in all phases of their participation in the pension scheme, proportionally to the choices to be made." The proposed information requirements are aligned with the EIOPA aim of the consumer protection (see our answer to question 52: For IORPs, which are sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the objective for supervision should be: "This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries.") But the IORP membership is always connected with employment and there is no choice for the employee to choose between several IORPs. Therefore the value of the information is, except for personal planning purposes, low. The information costs should therefore also be low.	
92.	Increased information for members of DC pension schemes, where members bear the investment risk and are asked or have the right to make choices at individual level, and the development of a Key Information Document could be helpful for the members. A harmonization at EU level seems difficult because country-specific	

	information is essential. Therefore we prefer Option 1 (No required common format at EU level for the pre-enrolment document and the annual statement).	
93.	We believe that the introduction of a Key Information Document could be useful, but it should be developed on the national level.	
94.	We emphasize that the information requirements should be adapted to the benefit structure. If there are no changes in the accrued entitlements over several years, an annual information requirement is not necessary.	
95.	No, we do not see any other parts of the regulation that should be harmonized. We agree with EIOPA that (see section 29.2.73) that "there is no need to disclose a report on solvency and financial condition to the public".	
96.	Yes. We emphasize, that additional information requirements will lead to additional costs. Therefore a proper impact assessment of all the consequences is needed.	