

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:	BVI Bundesverband Investment und Asset Management	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>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.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not</u> change the numbering in column “Question”. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>. ⇒ 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. <ul style="list-style-type: none"> ○ 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. <p>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).</p>		
Question		
General comment	Reasons for reviewing the IORP Directive: the European Commission gave three main objectives for reviewing the IORP Directive: <ul style="list-style-type: none"> • simplifying the setting-up of cross-border pension schemes; • securing modernisation of prudential regulation for IORPs which operate DC schemes; and • allowing IORPs to benefit from risk-mitigation mechanisms. <p>We are concerned by the fact that there are considerable trade-offs between the three objectives. In particular, while</p>	

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the implementation of some of the proposed new regulatory measures might increase the level of security offered by IORPs, many of these measures will increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity.

There is considerable concern that the imposition of Solvency II style regulation on existing employer based pension schemes could add **costs** to employers or reduce the level of benefits for beneficiaries. The additional burdens might outweigh any perceived benefits particularly for closed DB schemes and would accelerate the decline in provision of occupational retirement solutions. The first objective of encouraging cross border pension schemes would not seem relevant in many of these instances. In regard to DC pension schemes the application of additional capital for operational risks and other similar measures would reduce the benefits payable on retirement. Therefore, one of the main concerns of applying sections of Solvency II to pensions schemes would be that it has the effect to discourage the offering of pension savings through the workplace (which has been an effective way to create pensions savings schemes) or to discourage savings in DC style schemes, then the burden of supporting retirees would fall on the state. This would be an undesirable consequence, and one to be avoided, especially at a time when the authorities' goal should be to put more emphasize on the engagement of EU citizens towards pensions in general.

We fully support the European Commission's view that all IORPs should benefit from the **risk-mitigating security mechanisms** at their disposal. In our view, the main goal of any revision of the solvency regime for IORPs in that direction would be to ensure the protection of pension scheme members and beneficiaries. This is not to guarantee that the level of security offered by all IORPs across Member States is the same, for the simple reason that Member States have different views on the relative merits of capital requirement and other mechanisms such as the level of commitment from the sponsor and pension protection schemes.

We would also like to stress the fact that a risk-based approach should not be interpreted as a capital-based approach. The rules on governance, the supervisory review process, the rules on information disclosure to supervisory authorities and to members/beneficiaries are also essential to protect pension scheme members and ensure that they are properly informed about the exact nature of the pension promise.

BVI is a strong supporter of the objective of maintaining **consistency across financial sectors**. In this respect, we agree that the new supervisory system for IORPs should be constructed in a way that it avoids regulatory arbitrage between and within financial sectors. We disagree, however, with the position that the approach and rules used for the supervision of life assurance undertakings subject to the Solvency II Directive should be the main reference for the proposed new measures and mechanisms. The implicit goal of the IORP Directive review should not be to harmonize the prudential regime for IORPs and life assurance undertakings.

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	<p>We recognize that EIOPA stressed that there are important differences between IORPs and insurers and tried to reflect those differences in its analysis. In our view, the most important differences are:</p> <ul style="list-style-type: none"> • The conditionality of pension rights • The duration of pension portfolios • Additional layers of protection, such as backup liability of the sponsor • IORPs are not profit making organisations and their mission is to provide secure and sustainable pensions to their members • IORPs are often much smaller than insurance companies <p>It is not possible to support the proposed new regulatory framework for IORPs without knowing what would be the likely quantitative impact of the new regimes, in particular regarding the additional costs and administrative burden. We would therefore like to stress the importance of a thoroughly conducted Quantitative Impact Study.</p>	
1.	In general BVI agrees with the analysis of the options.	
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3.	BVI has no strong view on the options provided, however we agree with EIOPA that an extension of the scope to private pension schemes would not be appropriate.	
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5.	We agree.	
6.	The concept of ring fencing, as EIOPA notes, is complicated and care needs to be taken that the impact of any directive does not create any uncertainty regarding the ability of IORPs to enter into standard market transactions.	
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9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts.	
10.	The interpretation of what qualifies as social and labour law differs from one Member State to another. This situation creates additional hurdles to cross-border IORPs. It would therefore be useful to achieve a common understanding of what social and labour law should encompass.	

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	<p>As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions.</p>	
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12.	<p>The paper details a suggested approach to address concerns raised regarding significant differences on how pensions are structured relative to insurance companies and thus the inappropriateness of applying a straight Solvency II quantitative approach. The “holistic balance sheet” attempts to address these concerns.</p> <p>Firstly, we doubt the practical applicability. The approach is very complex. A correct and consistent (!) evaluation of non-financial assets would require a large set of rules and assumptions that would have to be applied by all IORPs, which might be in conflict with the principle of proportionality. Ultimately, the holistic balance sheet approach is a tool to make IORPs and insurers comparable and fit IORPs into the quantitative framework of Solvency II by the backdoor, which would not be acceptable.</p> <p>We are also concerned that the implementation of the approach will take a lot of additional practical efforts that particularly the smaller plans will be unable to implement and will be disproportionately effected. The implementation will be extremely complicated as there are numerous questions to address, such as</p> <ul style="list-style-type: none"> • In the case of sponsor backed IORPs, how will EIOPA take into account the risk that the sponsor is unable to provide the assets required to restore funding after a shock? • When IORPs are permitted to reduce benefits based on a contract concluded beforehand, how will EIOPA model this form of soft promise being made by the IORP or sponsor? • How will EIOPA incorporate this type of mechanism when the adjustment of benefits is left to the negotiation between the social partners that takes place ex-post? <p>One of the most difficult challenges will be to take into account the governance arrangements of IORPs, which often reflect a “social contract” between the main stakeholders (i.e. members, beneficiaries, employers) which allows for some sort of risk sharing between the stakeholders. This kind of mechanism differentiates very much occupational pension schemes from life insurance plans, which typically don’t allow for ex-post solidarity mechanism.</p> <p>Against this background, while being a tempting concept in theory, we doubt that the holistic balance sheet can act as a viable alternative to the existing IORP Directive in practice.</p> <p>Regarding specifically the distinction between Article 17(1) IORPs, Article 17(3) IORPs and sponsor-backed IORPs, we consider that this distinction should be retained because the recourse to sponsor support as well as the</p>	

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	existence of other security mechanisms should be considered explicitly. Only those IORPs should be classified as 17(1) IORPs that completely bear all risks by themselves. For example, Pensionskasse and Pensionsfonds in Germany would have to be classified as 17(3) IORPs because the sponsor is always liable in the second degree for the promised benefits.	
13.	Even for insurers it is questionable whether full market consistency is sensible in respect to the long-term perspective of liabilities. The liabilities of IORPs have an even longer perspective than that of insurers. Therefore, BVI accepts market consistency in principle, but strongly recommends the implementation of mitigating mechanisms (e.g. concepts as valuation of "held to maturity" securities to amortised purchase cost) to prevent negative impacts of irrational market behaviour. Valuation on a fully market-consistent basis could even favour pro-cyclicality. Furthermore, full market consistency may cause undesirable tactical bias of the strategic asset allocation.	
14.	We would like to stress that the nature of the IORP cannot be compared to the insurance activity as far as liabilities valuation and technical provisions are concerned. Thus, the concept of transfer value should not be applicable for IORPs, which have to be managed on an on-going basis not on a liquidation basis. The situation is different for insurance companies which have to provide other type of guarantees, as their main activity is risk acceptance; their business is to profit from the price of the risk. Furthermore, whereas insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, IORPs do not have this forced threat	
15.	BVI agrees.	
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21.	<p>We tend to agree with EIOPA that the use of a risk free interest rate and, connected with this, the transfer of all quantitative requirements of Solvency II to IORPs (option 2), would have several negative effects, i.e.</p> <ul style="list-style-type: none"> • a material rise in technical provisions in many Member States and therefore higher up-front financing costs for IORPs; • high volatility of results when calculating technical provisions and capital requirements due to changes in the risk free interest rate. This problem is likely to penalize many IORPs because they provide far more and 	

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	<p>longer lasting guarantees than life insurance companies do on average;</p> <ul style="list-style-type: none"> • pro-cyclicality effects; • problems for IORPs to comply with quantitative requirements; • reluctance of employers to further provide occupational pension to their employees because of higher up-front costs. <p>From this perspective, we consider it would be worth exploring further option 3 (approach with two discount rates/levels of technical provisions), as this approach would allow taking into account the specificities of IORPs in different Member States and easing pro-cyclical effects.</p> <p>In general, the mandatory application of a risk-free-rate for funding liabilities could ultimately lead to lower benefits, either directly through lower individual benefits or indirectly through rising reluctance of sponsors to engage in occupational pensions altogether. All stakeholders – including EIOPA and the Commission – should bear the trade-off between security and adequacy of pension benefits in mind.</p>	
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31.	<p>Given that it is of utmost importance that the principle of proportionality and materiality be strengthened in the new IORP Directive, it appears premature to wave through level 2 mandates before a thorough quantitative impact assessment on the potential consequences has been conducted.</p>	
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33.		
34.	BVI disagrees with the proposal.	
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36.	<p>BVI believes that the Solvency II framework for IORPs should take into account at least the following aspects of the occupational pension market:</p> <ul style="list-style-type: none"> • The various specificities of the vehicles in question. Each vehicle has different funding requirements and could operate in its own capacity through an IORP subsidiary or through providers (i.e. a bank, asset management entity, an issuer etc.). • The specificities of the products run and offered through the vehicle and whether it is a pure DC scheme. If a scheme does not contain any guarantee and/or biometric risk coverage, the market and longevity risks are borne by the member. • The specificities of the risks involved. Traditionally, only financial risks have been taken into account. However, other factors could be considered. EIOPA has identified eight different types of risks in a recent study. • Who bears that risk - is it the employer, the employee, the vehicle itself, or a combination of these? It is obvious that no “one size fits all”-approach can accommodate to this variety. • The specific role of the pension vehicle and whether it is to play an essential role in pension provision or to offer an additional source of retirement income. <p>Thus, the goal of achieving a <i>uniform</i> security level for IORPs across Europe appears very ambitious for reasons that are highlighted by EIOPA. Indeed, existing national Social and Labour Law allows for different levels of security, given the existence of ex-post benefit adjustment mechanisms and on-going legal obligations of sponsors to provide the full level of benefits. To the extent that these mechanisms reflect the “social contract” between the main stakeholders (i.e. members, beneficiaries, employers), Member States should retain full responsibility for the decision on the role of these mechanisms in accordance with the principle of subsidiarity.</p> <p>The following conclusions can be derived from these remarks:</p> <ul style="list-style-type: none"> • The review of the IORP Directive should not aim at harmonizing the level of security of Member States’ pension systems through the implementation of identical rules regarding the time horizon, the confidence level and the frequency of the calculation of solvency capital requirement. Indeed, imposing identical rules would represent an attempt to enforce a single definition of the “pension promise” across Europe, i.e. 	

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	<p>excluding the possibility of ex-post and ex-ante benefit adjustment mechanisms.</p> <ul style="list-style-type: none"> • The assessment of the confidence level that would be applied to IORPs should take into account other security measures, especially last resort measures to reduce benefits. To the extent that these cannot be taken into account adequately in the holistic balance sheet, a lower confidence level would be required to take into account these benefit adjustment mechanisms. Such elements should be related to the longer term horizon that IORPs typically have to implement policies and adjust their balance sheet. • Aiming at achieving a high level of harmonization of technical provisions across Europe does not appear consistent with the necessity to take into account in an explicit way the benefit adjustment mechanisms. 	
37.		
38.	<p>BVI would like to focus on the question of security of members/beneficiaries vs. security of the institution. The focus of IORP II is on security for the members/beneficiaries. Therefore, as long as there are additional security mechanisms, the whole concept of SCR could be seen as dispensable in the context of beneficiaries' security.</p> <p>The argument that Solvency Capital Requirements might raise costs and therefore dampen attractiveness of occupational pensions must be seriously considered. Therefore, a quantitative impact study is essential.</p>	
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42.	<p>From our point of view, the differentiation should not be made between DB and DC. Rather, the question is whether the IORP itself bears the operational risk and whether the claims/benefits of members might be affected in an unintended way or not.</p>	
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47.	<p>BVI considers the prudent person principle a fully sufficient basis for the investments of IORPs. In our view no additional provisions are required.</p>	

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	<p>If EIOPA nevertheless decides to propose to retain the option of restrictions “to protect members who bear the investment risk” (option 3 from page 271), we strongly believe that the Directive should not allow that Member States</p> <ul style="list-style-type: none"> • prevent IORPs from investing in UCITS, as UCITS are consistent, highly regulated and recognized across Europe and in other parts of the world. As a long-term investment product, UCITS offer the required quality in terms of portfolio diversification, professional management, level of investor protection and transparency, and liquidity; • impose portfolio limits that inhibit adequate diversification or impede the use of asset-liability matching or other widely-accepted risk management techniques and methodologies. <p>EIOPA should also require that any legal provisions setting forth quantitative portfolio limits be regularly assessed to determine whether they are unnecessarily inhibiting the ability of pension fund asset managers to implement optimum investment strategies and amended to the necessary extent.</p>	
48.	<p>In addition to our responses to Questions 47 and 51, we think that host Member States should not be allowed to apply some investment rules to the IORP assets that correspond to the activities in the host Member State. This means that Article 18(7) should be deleted in order to create a level playing field among Member States and eliminate a barrier to cross-border business.</p>	
49.	<p>It is clear that investment rules and limits may be set at the level of individuals schemes, and especially specific investment options, by the IORP itself. They should be consistent with its risk-appetite and the commitments it is willing to take with its members. We are not convinced however that there should be extra restrictions on investment rules for DC schemes, for the purpose of protecting the participants. The participants must be aware of the risk of the investment they are exposed to. This can be achieved by providing adequate information to participants and beneficiaries. Provision of targeted communications, financial advice and automated pension decision tools can further improve individuals’s ability to make the appropriate decisions. If EIOPA would nevertheless consider that Member States should have the possibility of introducing quantitative restrictions for DC schemes, the possible limitations should be agreed at the EU level to make it easier for IORPs to operate cross-border. In other words, in relation to the options presented on page 271, we support option 2 as the first option, and option 4 as a second best.</p>	
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52.	<p>BVI agrees with the analysis regarding the objective of supervision. The measures to avoid pro-cyclical behavior</p>	

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	need further analysis regarding the market impact of Solvency II adaption over the different regulatory and saving product areas.	
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58.	We believe that the current Article 20(10) IORP Directive should be maintained. IORPs should have one main supervisor, namely the home state competent authority, with the host state competent authority supervising the IORP via co-operation with the home state.	
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63.	<p>We support the general need of transparency and general governance requirements. However, the number of schemes and difference in form make the task of creating a uniform approach potentially costly for the industry, and potentially harmful in terms of benefits for members and beneficiaries. For many schemes, the imposition of the proposed regime would not reflect the differences in business models and backgrounds and create significant burdens and cost, especially where the IORP has no legal personality and responsibilities are borne by providers, such as asset manager or administrator.</p> <p>Thus, if the IORP Directive is to be brought closer to the Solvency II regime, it is crucial that the principle of proportionality is applied, in particular regarding own risk and solvency assessment, internal control, internal audit, actuarial function and outsourcing.</p> <p>BVI stresses the need for an impact study to assess the real impact of the new requirements.</p>	
64.	BVI agrees that EIOPA has correctly identified the areas where there should be differences between insurers and IORPs on general government requirements.	

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65.	BVI agrees that fit and proper requirements should be introduced as proposed by EIOPA. However these need to be applied proportionally.	
66.	BVI agrees that fit and proper requirements should be introduced as proposed by EIOPA.	
67.		
68.	<p>BVI considers that IORPs should have adequate risk management mechanisms in place with the understanding that their scope and complexity may vary according to the type and size of pension plan, fund and entity and the type and extent of risks faced.</p> <p>We agree it must be the responsibility of each IORP to define and implement a consistent and adequate solution for carrying out the risk management requirement. Also, the risk management function and systems should be implemented in a reasonable and proportionate manner depending on the nature, scale and complexity of the IORPs activities.</p>	
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73.	Compliance responsibilities need to be proportional to the size/type of IORP. If the requirements are disproportionate there is a danger that the costs become prohibitive and impact the level of support that a sponsor provides for a scheme. Furthermore, it must be borne in mind that questions of social and labour law need specialised expertise. A compliance officer cannot be expected to have this holistic view.	
74.	As per 73.	
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80.	The Directive currently provides that Member States may permit to outsource to third party service providers the	

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	<p>whole or part of IORP management.</p> <p>As far as we know, the established practices are consistent with the objective of protecting members and beneficiaries. In general, these practices reflect the specific characteristics of the occupational pension market at the national level and are therefore not necessarily conform to the material aspects of Solvency II requirements on outsourcing. To the extent that these practices have a strong track record in terms of scheme protection and cost-efficiency, we do not see any need for the Directive to be amended. The obvious consequence would be additional administrative costs for members and beneficiaries without any clear benefit.</p>	
81.		
82.		
83.	<p>In our opinion the proposed distinction between IORPs with or without legal personality (in which the IORPs with legal personality are treated similar to insurance companies) is justified. An extension of the requirements of UCITS IV or AIFM Directives to all kinds of IORPs would lead to uneven treatment between insurance and pension sectors in an area where there is no justification for differentiation. Therefore, we agree with EIOPA's evaluation that compulsory appointment of depositaries for IORPs with legal personality is not necessary.</p> <p>On the other hand, the (optionally) proposed compulsory appointment of a depositary in case of DC schemes needs further analysis. We see the need of a common understanding of hybrid schemes to avoid extension of inappropriate rules to such (already protected) schemes.</p>	
84.	<p>We very strongly agree with EIOPA that there is a need for a study to assess the real impact of the proposed new requirements. This is particularly important as the impact could significantly increase the cost of IORPs and the expected retirement income of members/beneficiaries. Any unjustified changes, especially those which would lead to unjustified increase of costs for the IORPs, should be avoided.</p>	
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89.	<p>BVI agrees with the analysis of the options. We are also concerned about the negative impacts of option 2 in terms of increased costs and potential member opt out and withdrawals from employers willing to sponsor.</p>	
90.	<p>BVI welcomes convergence of provision of information to supervisors in certain fields where appropriate and</p>	

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	provided it would not lead to disproportionate reporting requirements. We think this is a sufficient first step towards convergence of information provision.	
91.	BVI strongly supports the introduction of a KIID-like document for pension schemes to ensure that members receive relevant pre-enrolment information at or before joining to provide future members with comparable information on pension schemes and enable them to make the choices they are asked to make and compare, including between IORP schemes and life insurance products. The adoption of the KID for pension scheme would also represent a valuable and practical step to strengthen financial literacy and investor education. We consider such requirements especially necessary in the area of DC schemes.	
92.	<p>We consider that the elements of the UCITS KIID give ample possibility to provide essential product information. This said, it is clear that some adjustments will be required, in particular to provide information beyond investment to take into account the very long-term horizon of retirement savings and the specific information that are important to pension scheme members (e.g. employer contribution, available tax relief , etc). This means in particular that performance scenarios should be included in the KID and that the assessment of risk of different investment options and asset allocations should be conditioned to the time horizon of the member and may not be an objective characteristic of the option.</p> <p>Regarding the content, we agree with EIOPA that the presentation of costs and associated charges should be an essential part of the KID. The goal should be to make all costs and types of remuneration transparent.</p>	
93.	<p>BVI agrees with EIOPA that finding an appropriate way of presenting a risk/reward profile that is meaningful for all pension schemes will be challenging.</p> <p>In general, we consider that short-term risk measures (such as the one-year VAR used in the solvency II framework) only would not be appropriate to use for the long-term assessment of risk. As the risk/reward profile of an investment option is contingent on the time horizon of the prospective investment, the risk/reward profiles should be shown for different selected time horizons, e.g. 1 year, 5 years, 10+ years. This approach would also allow for a more favourable long term risk ranking of investment options with a higher short term risk (like equity). Using only one risk ranking for all time horizons as decision factor would induce a bias against certain investment options, depending on which time horizon was chosen for calculating the respective risk/reward profiles.</p> <p>Considering the number of assumptions about key economic and even individual variables, the creation of performance scenarios is necessarily complex. It should be communicated to the plan members that the results of performance scenarios are highly dependent on the assumptions used. To achieve a maximum of transparency and comparability of different KIDs, as many variables as possible should be uniform across IORPs. Setting variables on a national level seems to be best suited to achieve this aim.</p>	

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	We agree that performance information should always be included in a KID as it is an important part of members' decision-making process. And we strongly support EIOPA's view that performance scenarios would be very useful in the presentation of performance information. Dealing with this via level 2 implementing measures is a good idea.	
94.	BVI welcomes the idea of a personal annual statement. We would like to stress the importance of providing consistent information on levied costs, including administrative costs and the costs of specific benefits/guarantees. While taking note that it might be " <i>impossible and undesirable</i> " to fully harmonize the information requirements regarding occupational pensions foreseen in Article 20(7), we strongly agree with EIOPA that the minimum harmonization level could be raised especially for DC schemes.	
95.	We agree that the format of a potential KIID-document couldn't be <i>fully</i> standardised at EU level, as country-specific information is often essential. As to the proposed content, the level of harmonisation envisaged by EIOPA seems appropriate, subject to the implementation provisions to be formulated on level 2. We agree with EIOPA's suggestion to define principles at Level 1, while detailed technical requirements would be tailored by means of implementing measures. With regard to the latter, the implementing measures to the UCITS Directive should be considered a starting point for regulatory action.	
96.	BVI agrees that the additional costs for IORPs are less significant than the benefits in terms of protection of members and in terms of information and help in taking informed decisions. We recognize the difficulties of the task and therefore recommend that sufficient time be given to in-depth analysis and stakeholder testing in order to avoid undue or disproportionate cost and effort for IORPs and their beneficiaries.	