

**Comments Template on EIOPA-CP-11/006
Response to Call for Advise on the review of Directive 2003/41/EC: second consultation**

**Deadline
02.01.2012
18:00 CET**

Company name:

Belgian Association of Pension Institutions (BVPI-ABIP)

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Question	Comment
General comment	<p>1. BVPI-ABIP regrets the short time it had to analyse and answer the different fundamental questions, therefore BVPI-ABIP reserves itself the right to come back on different questions in a later stage.</p> <p>2. BVPI-ABIP considers and wishes to underline the importance of the fundamental difference between a pension scheme and a IORP. BVPI-ABIP acknowledges that this difference might be relatively small in some member states, but stresses that this difference is enormously important in other member states (e.g. Belgium).</p> <p>3. We seriously doubt whether there is a real need to review the IORP directive, and if yes, if the revision of the directive is the best way to resolve the underlining needs for revision:</p> <ul style="list-style-type: none"> - Only 84 of the 140.000 IORPs in Europe have cross border activities. However the practical experience indicates that this is not "due to the bad functioning of the actual directive", but more due to the facts that: <ul style="list-style-type: none"> o IORPs are not for profit institutions that are only executing the agreements made by the social partners, so the IORPs themselves are not interested to look for "cross border opportunities" o The biggest "barriers" to organise a cross border IORP employers face will not be resolved by the actual proposals for a revised IORP directive, because they are more linked to hidden barriers, fiscal issues, local resistance, complexity, etc."

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- Since the start of the works on the revision of the IORP directive, the further development of pan-European IORPs almost came to a standstill.
- Despite the ambition to review/limit the wide range of exclusion from the scope of the directive, the actual proposals leave all the exclusions untouched.
- Hereby the prudential framework for the IORP that are already strongly regulated, will be strengthened while the non-regulated institutions will stay unregulated?

4. BVPI-ABIP considers that the debate on (occupational) pension's provision and the rules by which occupational pensions are provided is a political debate and not a technical one. We therefore would like to call for a political debate within the different European Institutions and with all different stakeholders and national governments/parliaments.

As only part of occupational pensions are managed via IORPs, and even as occupational pensions are only part of and strongly interlinked with the broader pension policy, a review of the IORP cannot be handled separately from other (national and European) initiatives with regard to pension policy like the forthcoming EC White Paper on Pensions, an eventual review of the insolvency directive, the EU 2020 strategy, the different EU coordination directives on social security, and the different macro-economic and growth related initiatives, etc.

5. BVPI-ABIP agrees with the fundamental premise and starting point (which is already part of the actual IORP directive) that the supervisory regulation of pension institutions should be risk based and support equally the objective to achieve sustainable, safe and adequate pensions.

In the draft response to the Call for Advise the principle of risk-based supervisory regulation is however extended to imply that risk-based capital requirements should be necessary and

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should be harmonised across Europe.

BVPI-ABIP is deeply concerned the implementation of the proposals, made by EIOPA might lead to:

- A very important obligatory increase of the sponsor contributions, which would create,
- A new extra incentive for the continuous transition from DB to DC schemes, or even to close or winding up of pension schemes
- Or the transfer to unit-linked-like "insurance" solutions in which the members are less protected (e.g. "captive's", or in Belgium Branch 23, etc.)

We consider moreover that this will not lead to the achieved better protection and safety for the pension scheme members and might imply the end of most of the social not-for-profit and not market driven pension institutions (like IORP's in Belgium and many other member states are).

The key objective should be pension security for members; BVPI-ABIP fears strongly that the holistic balance sheet approach will not contribute to this objective.

6. The basis for the review of the IORP directive should be the IORP directive itself and the different reports published by CEIOPS. As IORPs are fundamentally different from insurance companies, it is not appropriate to use the framework of the Solvency II directive as a starting point.

BVPI-ABIP considers that it is from uttermost importance to treat fundamentally different institutions in different ways (not a one size fits all approach), because not-for-profit institutions differ them self among other this by their capital structure, governance, and goals.

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A revised IORP review should not cover the Pillar I issues out of Solvency II, but only the Pillar II and Pillar III elements. Therefore, the BVPI-ABIP believes that the pillar I elements of Solvency II should not be adopted to cover IORPs. On the other hand, many elements from pillar II exist already for Belgian IORPs and could be adapted to cover the IORPs as long the principle of proportionality is respected.

7. BVPI-ABIP is strongly concerned about this balance sheet approach because, among other things, does not make a difference between the solvency of the pension scheme (pension promise) and the solvency of the IORP. Despite the fact that they are links between both they do not overlap because they are not identical.

BVPI-ABIP is also deeply concerned about the explicit valuation of sponsorcovenants in the Holistic Balance Sheet, because:

- It will be extremely difficult to value this covenants and this will impede instead of easy the intended harmonization and comparability of coverage ratios and risks across Europe
- It is totally unclear if there will be an impact and if yes how on the balance sheets of the sponsor/employer, which implies a real risk how this sponsor covenants in a next step, should be funded. Preliminary discussions with auditors of employers learns us that they will probably require that the employers will recognize this covenants (which do represent real liabilities of the IORPs but only a overfunding / extra risk buffer) as a liability on their balance sheets.

8. IORP's deal with long term commitments. They are an important source of institutional investment, and can they play a stabilising role in crisis situations. IORP's are true long term investors. Therefore standards should be drafted in such a way that they are not

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procyclical nor intensify short term trends.

If all long term investors' turns to the same risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil. This creates a huge systemic risk. (e.g. IMF working Paper WP/11/18, August 2011 "Possible unintended consequences of Basel III and Solvency II", or Committee on the Global Financial System (Bank of International Settlements) Paper No 44, July 2011 "Fixed Income Strategies of Insurance Companies and IORPs")

The use of market prices for calculating pension assets and liabilities, especially the application of spot discount rates, and the implementation of quantitative risk-based funding requirements aggravate indeed pro-cyclicality in IORP investments.

Applying a solvency II type approach to IORPs will have consequences on the benefit levels and the social protection models in member states.

But it will also have important consequences that go well beyond the pension benefits themselves. The derisking a consequence of the market value approach will have an impact on the capital markets. Who will be there to take long term commitments? Who will be there to finance illiquid assets?

The proposed changes will have macro-economic impacts on employment and growth which will probably not be in line with the Europe 2020 strategy.

9. BVPI-ABIP wishes to stress that proportionality should be always taken in account when drafting and applying regulations. The rules must not constitute a hurdle for employers and social partners to provide pension benefits via IORP's or IORPs to operate

10. A new directive should not lead to the shift from one type to another, e.g. from defined benefit to defined contribution or hybrid schemes or vice versa, or from collective to

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individual, or occupational to private.

11. BVPI-ABIP considers also that pension policy fundamentally differs from consumer policies. Starting from a consumer protection idea supposes that IORPs are commercial operators providing a product and scheme members would be consumers of this product. The benefits managed by IORPs are not like that. In Belgium and many other member states, pension benefits of employees come from pension schemes that are embedded in the labour relations and are part of national social and labour law. In many cases the different choices follows out of collective choices by the social partners and can in no way be compared to consumer-like relations.

12 The freedom of social partners to negotiate on occupational pensions should not be hampered.

BVPI-ABIP regrets that Art. 28 of the Charter of fundamental rights, which is now binding for any EU-action, is not mentioned in the draft response of EIOPA. In many member states non-profit IORP's on collective agreement basis play a very important role, especially to widen the coverage of supplementary pensions systems. The jurisdiction of the ECJ (see C-45/09 – Rosenblatt, paragraph 67 et seqq.) attributes to the social partners a wide power of discretion by collective bargaining, also on occupational pension systems. Art. 153, 154 and 155 of the Lisbon treaty also recognises the role of social partners and social bargaining in shaping social policy. This power has to be safeguarded even by any European action.

13. One main challenge for policy makers should be to extend the provision of workplace

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pensions of EU citizens who presently are not covered by workplace pensions. BVPI-ABIP would like to remind EIOPA and the Commission of its intention not to negatively affect the supply and cost-efficiency of occupational retirement provision in the EU.

14. Given the multiple potential negative impacts envisaged in the revision of the IORP Directive, BVPI-ABIP advises EIOPA to plead for different thorough, adequate impact assessment studies carried out before any level 1 legislative proposals are made. This impact studies should cover the impact on the provision of occupational pensions by employers and social partners as well as both micro- and macro-economic impacts of the revision.

1.

CfA 1 Scope of the IORP Directive

Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?

BVPI-ABIP considers it as the uttermost importance that all pension schemes, occupational and non-occupational, in Europe are well protected.

BVPI-ABIP underlines however that a revised IORP directive might have a major impact in Belgium and some other member states that have already strong funded occupational pensions in place and that are into the current scope of the IORP directive. They might be faced with far reaching consequences of a harmonization, whereby other pension systems would stay out of its scope.

BVPI-ABIP would like to urge EIOPA and the European Commission to take explicit in

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consideration the differences that exist between the solvency of the pension institution (IORP or other) and the solvency of the pension scheme. Therefore we consider that the IORP directive is a directive that regulates pension institutions and should continue to do so.

If the Commission or EIOPA wish to take initiatives regarding the regulation of the pension schemes, we would invite them to take separate initiatives concerning the regulation and or sustainability of all pension schemes regardless of the pension institution that it used (IORP, insurance, book reserve, etc.).

Taking in consideration that we suppose that the IORP directive should only focus on the regulation of the pension institution that manages occupational pension schemes, we agree with the analysis of the options as laid down in this advice. Although the (new) 1st pillar bis schemes, which are excluded under the current Article 2(2)(a) of the IORP directive, are made in relation to an occupational activity and are managed by private financial institutions, they are to be considered as non-occupational schemes. Indeed, there is no relation between the employer and the pension scheme and the institution (the employer does not play a role in establishing the scheme or the institution, nor can he directly contribute to the scheme). Consequently, we believe these schemes are to be classified as non-occupational schemes. Because the IORP Directive is constructed on the basis of the relationship between the employer or sponsoring undertaking, the employees, the pension scheme and the institution (including the essential role of the employer or sponsoring undertaking in the funding of the pension scheme), extending the scope of the IORP Directive would imply removing the reference to occupational and reviewing in fact the basic principle or concept of the IORP Directive. We agree that such process would not facilitate harmonization of the prudential regime for IORPs and could in fact give rise to more complexity and problems with regard to the application in practice. Indeed, this might also be an obstacle in a view to a further promotion of cross-border activities. In our view, these occupational pension schemes are fundamentally different in nature from occupational pension schemes and should thus be covered by different regulatory frameworks.

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	The same applies on the schemes and institutions currently falling out of the scope of the IORP Directive without being explicitly excluded, because they are of a personal nature.	
2.	<p>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</p> <p>We see no other options that should be considered.</p>	
3.	<p>Which option is preferable?</p> <p>We have a preference for option 1 (no extension of the scope of the IORP Directive). The IORP Directive should in our view remain a directive focused on IORPs established by the employer and/or where the employer plays an important role in the funding of the IORP. The level of protection for the DC pension schemes such as the 1st pillar bis pension schemes, that are to be classified as personal pension schemes, should be covered by other national /EU frameworks, outside the scope of occupational pensions schemes.</p> <p>Even partial application (option 2) would in our view lead to difficulties to apply several provisions of the Directive, in the absence of a relationship between the employer and the pension scheme. This would create the need for specific requirements and increase the complexity of the IORP Directive.</p>	
4.	<p>Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?</p> <p>There are no such pension schemes or border line cases in Belgium.</p>	
5.	<p>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</p> <p>BVPI-ABIP agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different member states. In this</p>	

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respect, also a clear definition is needed of what is covered by prudential regulations and social and labour legislation.

It may happen that the sponsoring undertaking and the employer are not located in the same member state. Consequently, the social and labour legislation of another member state than the host state should be applicable in order to protect the members. This prevents in our view a simple definition of host state linked to the country of residence of the sponsoring undertaking. We therefore agree with the introduction of the requirement for IORPs to (also) respect the social and labour law applicable in the relationship between the employer and the (former) employees (irrespective of whether this is the law of the host member state).

Moreover, in our view sponsorship from outside the European Economic Area (e.g. from a US mother company) should also be allowed.

Therefore, we propose the following definitions:

Home Member State: means the Member State in which the institution has its registered office or, if it does not have a registered office, its main administration;

Host Member State: means the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking or any other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity, and the members;

Sponsoring Undertaking : means any undertaking or body (including a branch or subsidiary), regardless of whether it includes or consists of one or more legal or

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natural persons, which has a direct agreement with either the institution or the members and pays contributions into and/or supports the institution for occupational retirement provision, or which has a statutory or other legally binding obligation to fund the pension scheme in the event a funding shortfall arises.

Cross-border activity : means the situation whereby an institution established in a Home Member State accepts sponsorship from a Sponsoring Undertaking located in another state, to manage a pension scheme subject to a Host Member State's social and labour law relevant to the field of occupational pension schemes;

It is in our view more appropriate to link the definition of Host Member State to the state which social and labour provisions are applicable in the relation between the employer and its (former) employees, than to the mere location of the Sponsoring Undertaking.

If the above-mentioned definitions are adopted, Article 20 of the IORP Directive should be adapted so as to involve the State where the Sponsoring Undertaking is located, if this is not the Host Member State.

Notwithstanding the foregoing, BVPI-ABIP considers it of uttermost importance that the definition and thus the role of the Sponsoring Undertaking should be clearly defined in the light of a possible review of the "Valuation of Assets, Liabilities and Technical provisions" (CfA 5), the "Security Mechanisms" (CfA 6), the "Objectives and Pro-Cyclicality" (CfA 8) and the "General Principles of Supervision scope and transparency and accountability" (CfA 9).

6. **What is the view of stakeholders on the proposed principles of ring-fencing? Are**

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the principles responding to the concerns expressed in the CfA?

BVPI-ABIP agrees that it a clarification and a uniform definition of the concept and its scope of ring fencing is welcome. BVPI-ABIP considers however that if ring-fencing will be obligatory, it should be limited to administrative ring fencing.

- Ring-fencing in het context of Article 16.3. of the Directive

BVPI-ABIP is in favour of option 1. According to BVPI-ABPI Member States should have the freedom to decide whether ring-fencing is mandatory in the event of cross-border activities or optional. BVPI-ABIP is convinced that Member States should not be allowed to prohibit ring-fencing.

- Ring-fencing in the context of Article 18.7. of the Directive

BVPI-ABIP agrees with the analysis of EIOPA that in the framework of Article 18.7 administrative ring-fencing may have to be imposed, more in particular if the investment rules of the Host Member State are not compatible with the investment rules of the Home Member States. BVPI-ABIP does not agree that Article 18.7. also requires patrimony protection rules.

- Ring-fencing in stress situations

BVPI-ABIP agrees with EIOPA that a stress situation should not be a trigger for ring-fencing.

- Definition of ring-fencing

BVPI-ABIP agrees with the definitions proposed by EIOPA in the event of mandatory administrative ring-fencing and/or patrimony protection rules. BVPI-ABIP is convinced that if the IORP opts for ring-fencing, in the event of optional ring-fencing, the administrative

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	ring-fencing and/or patrimony protection rules should be defined in the same way in order to increase transparency.	
7.	<p>How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing?</p> <p>BVPI-ABIP agrees with EIOPA's analysis of the positive and negative impacts of ring-fencing in the different situations. BVPI-ABIP wishes to stress the administrative complexity and thus increased costs that ring-fencing may bring about. That is the main reason why it would prefer ring-fencing to remain optional in the Directive.</p>	
8.	<p>What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible?</p> <p>Ring-fencing should only be mandatory in the cases where the investment rules are not compatible. Even in that situation, BVPI-ABIP is convinced that imposing administrative ring-fencing is enough. Patrimony protection rules should remain optional.</p> <p>In all other situations, ring-fencing should remain optional.</p>	
9.	<p>What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes, why?</p> <p>No. Privilege protection rules should remain optional, it being understood that in cross-border schemes the same privilege rules should apply to local members as to cross-border members.</p>	

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<p>10.</p>	<p>Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2?</p> <p>Yes. However, BVPI-ABIP wishes to stress that "conditions of operations" should also include governance and organisation of the IORP.</p> <p>Moreover, it seems advisable to provide for a default clause (all provisions that have not been defined as social and labour law by the Host Member State are of the competence of the Home Member State) in order to avoid a legal vacuum, or uncertainty as to which Member State is responsible.</p> <p>For the sake of clarity and transparency, BVPI-ABIP proposes to ask Host Member States to provide for a comprehensive summary of the applicable social and labour provisions (instead of just a copy of the applicable legislation) this could, as stated by EIOPA in 7.3.18, increase transparency and facilitate the implementation of cross-border activity..</p> <p>BVPI-ABIP considers that the Belgian case may serve as a good example of a clear distinction between prudential law on the one hand and social and labour law on the other.</p>	
<p>11.</p>	<p>How would you assess the impact of option 2?</p> <p>The BVPI-ABIP agrees with the impact assessment made by EIOPA, especially with the concern that some Authorities / Member States might question the validity of the Directive in this respect. BVPI-ABIP is also concerned about issues not being governed by one of the prudential law provisions, nor by the applicable social and labour law provisions. To avoid this, BVPI-ABIP proposes to insert a default clause in the Directive.</p>	
<p>12.</p>	<p>What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs</p>	

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and sponsor-backed IORPs should be retained or removed?

BVPI-ABIP rejects the proposal of a holistic balance sheet. However it supports the idea of taking into account all the risk mitigating instruments that an IORP has.

BVPI-ABIP is convinced that a fundamental and clear difference needs to be made between the pension fund (IORP) and the pension scheme/pension promise.

The concept of the holistic approach might be an interesting concept (taking in consideration the technical remarks) for the evaluation of a pension scheme. It could therefore be used to judge the safety of a pension scheme independent from the vehicle that is used to finance it (IORP, insurance, book reserve ...).

It might even be useful to evaluate the sustainability of systems functioning on a PAYG and/or mixed basis, and overcome eventually the taxonomy problems around 1st, 2nd pillar, etc. and make the security of pensions across Europe comparable.

BVPI-ABIP considers however that the analysis of the security and sustainability of the pension **scheme** /pension **promise** goes and should go beyond the IORP (revised) directive (as it should apply to all pension schemes independent of the vehicle that is used) and would suggest that the European Commission could address this in the forthcoming White Paper on pensions or take a separate initiative on this (which could interfere but not be fully tackled by the review EIOPA suggested of the insolvency regulation 1346/2000).

We consider however that the holistic balance sheet is not useful to be applied as a supervisory tool for an IORP, because :

- The regulation of the IORP should focus on the institution not on the scheme; Fundamentally prudential supervision is not the appropriate tool to tackle issues of social protection.

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Solvency II for insurance companies examines only the engagement made by the insurer and not the engagement between the sponsor and the beneficiaries. This is not necessary (like it is for all pension schemes in Belgium) equal to the pension scheme.

- Occupational pensions are based on social and cultural traditions and strongly linked to first pillar pension provision in the different Member States. Pension security is about much more than scheme funding levels alone and a single approach to pension security, which only focuses on the short term assessment of long term solvency will jeopardize many existing European pension systems.
- As far as the solvency of a IORP vehicle is concerned, BVPI-ABIP believes the nature of the commitment (if any) taken by the vehicle is essential to design its supervisory framework. It is clearly the case for the insurance companies in Solvency II, so not doing this would lead to a de-level playing field between different vehicles. There is a distinction between the commitment of the scheme sponsor, and the commitment taken by the pension institution. This is a strong argument in favour of maintaining the distinction referred to in Article 17.
- The main assumptions underlying the holistic balance sheet approach are taken from the Solvency II model i.e. market consistent valuation of liabilities, VaR as risk measure. BVPI-ABIP asks EIOPA to advise that applying Solvency II rules to IORPs would mean a drastic increase in required assets. This is due to the use of different (lower) rates of discounting the liabilities and the implementation of (higher) capital requirements. The capital requirements aim to provide a high level of pension security in the short term, which would come at a very high price.
- IORPs would have to ask their employer companies and employees for extra support. It is unclear whether they would be able to / be ready to provide this extra money or these required additional assets. If that is not possible/not the case, this will lead to lower benefits or even lead to a closing down of the pension schemes. BVPI-ABIP is also concerned that Solvency II capital requirements could lead to a de-risking of investment portfolios, threatening future returns and thus, benefit levels.
- The fundamental premise in the call for advice is that supervisory regulation should

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be risk-based. This concept is extended to imply that capital requirements are needed and should also be risk-based. BVPI-ABIP disagrees with this conclusion. We believe that 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 it is the sponsor's utmost priority that contributions to the scheme are stable. 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 itself into a benefit design and asset allocation (regardless if it is decided upon unilaterally by the employer or collective bargaining by social partners) that precludes excessive risk. moreover, 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).

Introducing capital requirements that are risk based (i.e. the higher the risk, the higher the capital requirement) are 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 of 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 as a diversifier of risk. The same applies to liability risk. Identifying, quantifying and modelling duration and longevity risks are an important part of the risk management process within IORPs. These risks place a charge on the risk budget. Imposing an additional capital charge is doubling and therefore superfluous.

To highlight why imposing risk-based capital requirements could in fact increase risk, do consider periods of high capital market volatility. 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 increase in contributions to the IORP (contrary to insurance companies where there exist shareholders, where the

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sponsor and the shareholder will split the burden). This may coincide with a period of economic stress in the real economy to which the employers 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 employer expressed by analysts and rating agencies. In the end, the member will not only be exposed to the risk of the scheme becoming unaffordable to the sponsor but also in case of becoming retrenched the employer will suffer as a result.

- It is in this totally unclear which impact the valuation of the sponsor will have on the balance sheets of the sponsor/employer, which implies a real risk that this sponsor covenants in a next step, should be funded. Preliminary discussions with auditors of employers learns us that they will probably require that the employers will recognize this covenants (which do represent real liabilities of the IORPs but only a overfunding / extra risk buffer) as a liability on their balance sheets.
- Not only the retirees, employers and employees will be affected by a Solvency II regime for IORPs. Negative effects will be seen on the total European economy. Higher pension contributions and sponsor support automatically lead to higher labour costs and that will make the European economy (or at least the ones of the member states where the IORP directive will have a material relevance) less competitive. In addition, less capital will be available for investments which will have a negative impact on employment. Lower pension benefits will hurt the purchasing power of future retirees and thus the consumption in Europe.
- As a consequence of derisking investment portfolios there would also be less capital available to companies. It would not only mean lower expected returns and therefore lower pensions or higher contributions, but also less available capital for companies. IORPs are important suppliers of capital to listed European multinational corporations, small and medium-sized enterprises (SMEs) as well as a great number of innovative start-ups. A Solvency II regime for IORPs will excessively limit their opportunities. This outcome would have a negative impact on employment in the European Union. The proposed revision is not in line with Europe 2020 Strategy. In addition, we are concerned that the EU debt crisis has already reduced FDI in European companies

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	<p>- The approach is too cumbersome to work with and neither the implementation measures nor the impact are very clear. Assumptions are accumulated, and create insecurities. An important model risk will appear.</p> <p>Taking the forgoing and our remarks about the general review of the directive in consideration, BVPI-ABIP is strongly in favour of option 1 to "<i>maintain the existing distinction between Article 17(1), Article 17(3) and sponsor backed IORPs in the review of the IORP Directive</i>".</p>	
13.	<p>Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?</p> <p>Yes. However use of fair valuation of long term or illiquid assets as an equivalent to market consistent valuation should be appropriate.</p>	
14.	<p>What is the stakeholders' view on the two options regarding the starting principle for valuing liabilities? Do stakeholders agree that such a principle for IORPs should contain no reference to transfer value?</p> <p>Option 1. We agree that there should be no reference to the concept of transfer value because we want to stress the importance to consider IORPs thru an on-going-concern approach.</p> <p>Liabilities that are valued in a market consistent manner are not necessarily equal to a transfer value. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, this is not the case for IORPs. Also the transfer value of pension scheme will be different in case the transfer would go to an insurance company or to another IORP.</p>	

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<p>15.</p>	<p>Do stakeholders agree that the own credit standing of IORPs should not be taken into account when valuing liabilities?</p> <p>Yes. The own credit standing of the IORP should not be taken into account. Taking the credit standing of the IORP into account, is denying the on-going-concern principle. The idea starts from the assumption that there is a market available to take over the liabilities. This is not the case.</p>	
<p>16.</p>	<p>What is the stakeholders' view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?</p> <p>BVPI-ABIP is in favour of option 1 no change of the current IORP Directive on this point. There is no need to make sure that supervisory standards are compatible with accounting standards. BVPI-ABIP agrees with EIOPA's remark that the objective of the 2 bases is too different to achieve convergence and considers that the current IAS / IFRS regulation are unfit to form the basis of a solvency regime for IORPs.</p>	
<p>17.</p>	<p>Do stakeholders agree with the EIOPA view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive? What is the stakeholders' view on the two proposed options regarding Article 76(3)?</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.</p> <p>BVPI-ABIP agrees with EIOPA's view to adopt art. 76(1), 76(4)</p> <p>We think that the valuation of liabilities based on financial data is sufficient to approach a fair value or market value. We consider the idea of "market consistency" to be directly</p>	

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	<p>linked to transfer values and the use of the lowest risk interest rates for discounting. We do not agree on the use of the latter.</p> <p>76(5) refers to art. 77. It contains the risk-free interest rate term structure and other elements that we do not support.</p>	
18.	<p>What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.</p> <p>The valuation assumptions should reflect long-term expectations and be prudent. These may need to be changed from time to time if experience difference 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 undertaking nor the members.</p> <p>We would therefore, be in favour of keeping article 15 of the IORP directive.</p>	
19.	<p>Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions?</p> <p>BVPI-ABIP is in favour of taking into account only the current benefits without any future accrual. For taking into account also future accruals, and thus automatically also future contributions and future returns, a lot of very influential assumptions should be made, which leads to the risk of making the supervisory framework very dependent on the assumptions and the subjectivity of these assumptions.</p>	

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20.	<p>Do stakeholders agree that the best estimate of IORPs should be calculated gross without deduction of amount recoverable from reinsurance contracts and special purpose vehicles?</p> <p>Yes, BVPI-ABIP agrees that the best estimate of liabilities should be calculated without any amounts recoverable from insurance contracts.</p>	
21.	<p>What is the stakeholders' view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative impacts)?</p> <p>BVPI-ABIP disagrees with both options, because we share the analysis of EIOPA in paragraph 9.3.69 that:</p> <p><i>"9.3.69. The main reasons arguing against the approach of calculating technical provisions with a market consistent risk-free interest rate are:</i></p> <p><i>a. The suggested approach does not allow consideration to be taken of the investment policy specific to the IORP, which is permitted in the existing Directive.</i></p> <p><i>b. A market-consistent valuation generally leads to a high volatility of results. This would be the case especially for IORPs with their very long-term nature which often leads to a large mismatch between assets and liabilities. Such volatility could be addressed by appropriate risk management (e.g. hedging) or by absorbing volatility by using lengthy recovery periods or in policy responses (see e.g. the OECD paper on counter-cyclical funding rules). It has to be noted though that hedging is not always possible for very long guarantees as is the case for IORPs.</i></p> <p><i>c. There is the risk of all IORPs reacting to changes in the risk-free interest rate at the same</i></p>	

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	<p><i>time and in the same way in adverse situations. This would increase the risk of pro-cyclical effects. IORPs can serve as a stabilizer for markets if they are not regulated in a way that causes pro-cyclical effects. This issue is partly dealt with in Solvency II by applying a counter-cyclical premium and through policy responses."</i></p> <p>Therefore and because the negative impacts of option 2 and 3 are too important, BVPI-ABIP wishes to bring option 1 back on the table.</p>	
22.	<p>Do stakeholders agree that expenses incurred by the IORP in servicing accrued pension right should be taken into account in technical provisions as introduced by Article 78 of Solvency II?</p> <p>Yes, BVPI-ABIP agrees to this proposal, an estimation of the expenses linked to accrued benefits should be taken into account in the value of the liabilities.</p>	
23.	<p>Do the stakeholders agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II? Do stakeholders find that discretionary benefits should be included in the best estimate of technical provisions? Is the Solvency II article on surplus funds useful for IORPs in this respect?</p> <p>BVPI-ABIP considers that discretionary benefits should not be included in the best estimate of technical provisions.</p>	
24.	<p>Do stakeholders agree with EIOPA's view of introducing Article 79 of Solvency II with appropriate amendments into a revised IORP Directive regarding allowances for financial guarantees and contractual options when establishing technical provisions?</p> <p>Yes, BVPI-ABIP agrees that contractual options should be disclosed in the value of the technical provisions.</p>	
25.	<p>Do stakeholders agree that it would be useful to introduce Article 80 of Solvency</p>	

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	<p>II with appropriate amendments into a revised IORP Directive regarding appropriate segmentation of risk groups when calculating technical provisions?</p> <p>BVPI-ABIP prefer option2, Article 15 of the actual IORP directive is sufficient.</p>	
26.	<p>What is the view of stakeholders on the two options regarding recoverables form reinsurance contracts and special purpose vehicles as introduced by Article 81 of Solvency II?</p> <p>BVPI-ABIP favours option 1, not to include article 81 of the Solvency II directive in the IORP directive.</p>	
27.	<p>Do stakeholders agree that it would be useful to introduce Article 82 of Solvency II with appropriate amendments into a revised IORP Directive regarding the availability of data and the use of approximations in the calculation of technical provisions?</p> <p>Yes, BVPI-ABIP agrees it would be useful to have an Article regarding the availability of data and the use of approximations in the calculation of technical provisions. But since this is already covered by the current IORP Directive, BVPI-ABIP believes that it is not necessary to introduce article 82 of the Solvency II directive into the IORP directive.</p>	
28.	<p>Do stakeholders believe that it would be useful to introduce Article 83 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for assumptions to calculate technical provisions to be regularly compared against experience and adjustments made when appropriate?</p> <p>Yes, BVPI-ABIP agrees that an Article is useful regarding the comparison of technical provisions against experience, with appropriate adjustments. BVPI-ABIP wishes however to underline the need or proportionality and to avoid an excessive administrative burden. Since this is already covered by the current IORP Directive and it is therefore not necessary to revise this article.</p>	
29.	<p>Do stakeholders agree that it would be useful to introduce Article 84 of Solvency</p>	

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	<p>II with appropriate amendments into a revised IORP Directive regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions?</p> <p>Yes, BVPI-ABIP agrees it is useful to have an Article regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions. BVPI-ABIP wishes however to underline the need or proportionality and to avoid an excessive administrative burden. Since this is already covered by the current IORP Directive BVPI-ABIP believes that it is not necessary to revise this article</p>	
30.	<p>Do stakeholders agree that it would be useful to introduce Article 85 of Solvency II with appropriate amendments into a revised IORP Directive regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law?</p> <p>Yes, BVPI-ABIP agrees that an Article can be added regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law. Since this is already covered by the current IORP Directive, BVPI-ABIP believes that it is not necessary to revise this article.</p> <p>Furthermore any rise of technical provisions has to be ordered with due consideration concerning amount and time. Otherwise the sponsor(s) could get damaged.</p>	
31.	<p>Do stakeholders agree that a new IORP Directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II?</p> <p>BVPI-ABIP strongly disagrees with the proposal that a new IORP directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II.</p> <p>BVPI-ABIP advises to EIOPA to answer to the Commission that Quantitative and Qualitative</p>	

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	<p>Impact Studies – on the level of the effect for an individual IORP and on the level of the effects of total pension provision in Member States - regarding the revision of the IORP directive <i>before</i> Level 1 measures are decided or even proposed upon. The character of the pension benefit differs from Member State to Member State. As a result of the different characteristics of pension benefits, also the way how technical provisions are calculated is different. A relative small change of the way technical provisions have to be calculated could have major consequences.</p>	
32.	<p>Do stakeholders agree that individual Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive?</p> <p>We suggest providing only rules regarding minimum requirements. This will lead to a desired level of security. In that case an article prohibiting additional rules is redundant.</p> <p>For these reasons we support option 1: Art. 15 (5) of the current IORP directive should be retained.</p>	
33.	<p>What is the stakeholders’ view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?</p> <p>One of the great advantages of an IORP is that it has the ability of risk mitigating mechanisms, just like sponsor support. Sponsor support is an instrument to provide pension security and therefore has to be taking into account. When an IORP can call on sponsor support, it is not necessary for an IORP to have the same kind of capital requirements than an IORP without sponsor support. The same holds for other kind of risk mitigating mechanisms, just like for example a pension protection scheme.</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule and their implementation in the holistic balance</p>	

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sheet. We believe that own funds are unnecessary in a system where the IORP has sponsor support. However if the European Commission would go through with this idea, we would like to give the following comments.

There should be more simple methods to allow for taking sponsor support into account, not in monetary terms and without presenting it in a Holistic Balance Sheet (e.g. mentioning it off balance, as is done today).

BVPI-ABIP is strongly worried about valuating the sponsor covenant:
Valuating the sponsor covenant seems not only be highly complex (and thus sensible to model risks) 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.

We got the confirmation of different auditors that there is a real probability that if a sponsor covenant is valuated in the IORP, they will probably require the sponsor to recognise the same amount in the sponsors balance sheet (even if this does not cover liabilities, but only potential risks).

If such recognition in the financial statements of the sponsor would be required by the auditors of the employer, this would have an enormous negative impact on the employer and his competitive stance.

Such development would have a dramatic impact on the appetite of corporates to sponsor occupational pensions or would in the best case lead to a transfer of the benefits to other vehicles which are not subjected to the holistic approach (but which might not necessarily give the same protection to the members).

34.

Do the stakeholders agree that Articles 87-99 of Solvency II on own funds should

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	<p>be applied to IORPs? What amendments, other than the ones suggested by EIOPA, should be made?</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule and their implementation in the holistic balance sheet.</p> <p>Therefore BVPI-ABIP is opposed to the application to IORPs of articles 87-99 of the Solvency II Directive on own funds. IORPs have no own shares, neither do they have subordinated liabilities. The additional concepts of ancillary own funds and surplus funds seems therefore superfluous for IORPs. The same holds for the tiering of own funds. This concept is not applicable for IORPs.</p>	
35.	<p>Do stakeholders agree that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive?</p> <p>BVPI-ABIP considers that subordinated loans from employers to the IORP should be allowed. The subordination feature can offer loss absorption in problematic, but going concern situations.</p>	
36.	<p>What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?</p> <p>There should not be a uniformed level of security for IORPs across Europe. The diversity and complexity of pension schemes throughout Europe is such that national supervisors need to have leeway to judge and rule specifically.</p>	

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	<p>The decision regarding the adoption of a uniform confidence level across EU countries as well as the definition of a specific probability for the confidence level is of a highly political nature.</p> <p>EIOPA states not to advice on a specific probability level. BVPI-ABIP agrees on this, but would like to add the suggestion that EIOPA, considering the arguments mentioned, advice the EC not to pursue a uniformed security level.</p> <p>BVPI-ABIP thinks that the IORP directive should not prescribe a uniform level of contribution rate, accrual rates or indexation policy, nor a uniform level of security of pension income</p> <p>There should be an appropriate balance between affordability, adequacy and the level of security.</p>	
37.	<p>Do the stakeholders agree that the confidence level should apply to a one-year time horizon?</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.</p> <p>As discussed earlier, BVPI-ABIP considers that a harmonized confidence level is not appropriate for IORPs. If a value at risk oriented calculation for capital requirements is chosen - which we think is inappropriate for IORPs - we agree that a one-year time horizon is sufficient.</p>	
38.	<p>What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.</p>	

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	<p>BVPI-ABIP firmly rejects the proposal of applying the Solvency II-rules for calculating the SCR to IORPs.</p> <p>Pension security is about much more than scheme funding levels alone, therefore BVPI-ABIP is amongst other things strongly in favour of the prudent person principle in regard to the investments. Concerning pension security a broader approach than funding levels is required, taking into account the full range of mechanisms that pension institutions across different member states now use to ensure that pension incomes are safe and secure.</p> <p>When an IORP can call on other kinds of risk-mitigating elements, such as a protection fund or a sponsor guarantee, the calculation of a SCR is not necessary.</p> <p>If the commission would require the calculation of an SCR – which would be strongly against the opinion of BVPI-ABIP – this SCR should not be presented in a balance sheet or a holistic balance sheet; but can if wanted be mentioned off balance.</p> <p>We draw your attention like we mentioned before on the fact that if all long term investors turns to risk based supervision using the same type of harmonised standards, everyone might be forced to move in the same direction in periods of turmoil, creating procyclical behaviour. This creates a huge systemic risk.</p>	
39.	<p>Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?</p> <p>BVPI-ABIP’s strong preference is <i>not</i> to impose the SCR.</p>	
40.	<p>What is the stakeholders’ view on imposing a minimum capital requirement (MCR) upon IORPs? What adjustments to the Solvency II rules are needed regarding the</p>	

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structure and frequency of the calculation?

BVPI-ABIP rejects the idea of imposing minimum capital requirements as a general rule.

The aim of a minimum capital requirement calculation under Solvency II is to allow in case of the insurance companies insolvency, to close the company for new business and start to transfer assets and liabilities to another insurance companies. This is different for IORP's. IORPs are mostly set up to manage the pensions of a specific sponsor, and it is impossible for the sponsor to run away from the IORP.

Therefore we suggest option 1 regarding the existence of MCR (10.3.102). Therefore any other options need not to be judged.

41.

What is the stakeholders' view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?

BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of assets and liabilities as a general rule. One of the great advantages of an IORP is that it has risk mitigating mechanisms, like a pension protection scheme or sponsor support etc. that give extra protection. However if the European Commission would go through with this idea, we would like to give the following comments.

When an IORP is covered by a pension protection scheme (or a sponsor guarantee), it is not necessary for an IORP to have the same kind of capital requirements than an IORP without.

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42.	<p>Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?</p> <p>BVPI-ABIP considers that the protection of scheme members in DC schemes where all investment risks are borne by the scheme members is of uttermost importance, but BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of assets and liabilities as a general rule and stress that the eventual impact of the implementation of this measure should be assessed before taking any stance on this question.</p>	
43.	<p>What is the stakeholders' view on the analysis regarding the duties of IORPs and the powers of supervisors in the case of deteriorating financial conditions as introduced by Article 136 and 141 of Solvency II?</p> <p>Except from the general provision in Article 136 all following article do not reflect the situation of IORP's where sponsors or participants bear the risk.</p> <p>BVPI-ABIP supports article 136 of the Solvency II Directive. Indeed, when the IORP</p>	

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disposes of procedures to identify deteriorating financial conditions, they will know how to act in stress situations.

Applying article 141 would require amendments to make it suitable for IORP's. They are not confronted with the possible dilemma between the interests of policyholders and of shareholders like this is the case for commercial insurance companies. IORP's have stakeholders, sponsors and beneficiaries who are all victims of financial stress situations. Should this be the case, the first action taken by the board and, in case of further deterioration taken by the supervisor, should not be to restore as fast as possible the solvency position, but to take appropriate measures for all of the stakeholders. Taking in consideration the specific nature of IORPs and the important differences that exist throughout Europe, and their importance for/possible impact on the funding of the European economy it is important that the current flexible position on recovery plans is retained

44.

What is the stakeholders' view on the analysis regarding the submission of recovery plans and the length of recovery periods as introduced by Articles 138 and 139 of Solvency II? Should the recovery periods – with regard to the SCR and possibly the MCR – for IORPs be flexible, fixed or a combination of both? What would be the reasons – if any – to allow IORPs longer recovery periods than prescribed by Solvency II?

BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.

BVPI-ABIP is very much in favour of option 1. This option retains the current flexible position on recovery periods.

The recovery periods out of Solvency II are not appropriate for IORPs. The OECD paper "*The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-*

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Cyclical Funding Regulations" (2010) shows that the current recovery periods in the different Member States are much longer than prescribed in Solvency II. Shorter recovery periods will stimulate IORPs to a procyclical investment policy, which does not only harm the pension incomes, but also the European Economy as a whole. After the crisis in 2008, many national regulators decided to lengthen the recovery period due to the character of the crisis. Such kind of flexibility should also be possible in the revised IORP Directive.

IORPs should have longer recovery periods than insurance companies or banks, because of the long-term character of the liabilities of an IORP and the fact that IORPs cannot be subject to 'bank-runs'. This is – economically – an advantage of IORPs. The revised IORP should take this into account.

It is the opinion of BVPI-ABIP, that when IORPs will be confronted with the shorter recovery periods from Solvency II, this would not only seriously harm the pension provision for participants, but it will also harm the total economy: short recovery periods forces IORPs to a procyclical investment; contribution and benefit policy.

Therefore BVPI-ABIP advises EIOPA to plead for a series of quantitative impact assessments, before a decision is taken about recovery periods.

45.

Do stakeholders agree that the IORP Directive should be extended with stipulations introduced by Article 137 and 140 allowing supervisors to prohibit the free disposal of assets when IORPs do not comply with the capital requirements or the rules for establishing technical provisions?

As far as all earlier and further remarks against capital requirements for IORP's are taking in consideration, BVPI-ABIP agrees that a supervisor might be allowed to impose a prohibition to free disposal of the assets within the IORP.

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46.	<p>Do stakeholders agree that it should be specified in the IORP Directive what constitutes a recovery plan as introduced by Article 142 of Solvency II? How should the contents differ from those of insurance companies?</p> <p>We do not agree that this should be specified in the IORP directive. Taking in consideration the important difference in IORPs around Europe and their importance for/impact on the European economy, this should remain flexible.</p> <p>Therefore Article 142 of Solvency II is not appropriate. Especially estimates of management expenses and estimates of income and expenditure in respect of direct business are not relevant for an IORP.</p> <p>A projection for the upcoming years should be the basis for a recovery plan of an IORP. Such analysis shows the prediction of the financial position of the IORP, including all the paid benefits, received contributions and expected returns. Furthermore, the recovery plan should contain the contribution policy, the investment policy, the indexation policy and the policy of the IORP with respect to cutting benefits.</p>	
47.	<p>Do stakeholders believe that the prudent person principle is a sufficient basis for the investment of IORPs or is additional provision needed?</p> <p>BVPI-ABIP considers that the prudent person principle should remain the basic principle in a revised IORP directive. The prudent person principle guarantees that the IORP makes only investments which serve the best interest of the affiliates of the IORP. Investment rules should be consistent with the retirement objective of an IORP, based on the (nature and duration of the) liabilities, and be based on appropriate risk management.</p>	
48.	<p>Do stakeholders feel that Member States should have the option to impose</p>	

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	<p>limitations on investments in addition to those set out in the IORP Directive? What about host member states?</p> <p>We are not in favour for this. If there is (see prior question) a sufficient basis, no extra rules should be imposed.</p>	
49.	<p>To what extent do stakeholders believe the investment provisions of the Directive should differ between defined benefit and defined contribution pensions?</p> <p>As the directive should limit itself to the prudent person principle combined with the principle to invest all assets in the best interest of the members/beneficiaries, differentiation should be allowed between defined benefit and defined contribution investments.</p> <p>The prudent person principle should be the basis for all types of schemes.</p>	
50.	<p>Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?</p> <p>BVPI-ABIP considers that the options and the analysis of the pro's and con's is fairly exhaustive.</p>	
51.	<p>What is stakeholders' view of the current prohibition on borrowing in Article 18(2)?</p> <p>We have the opinion that borrowing should be possible, only for effecting the investment management (efficient management) or for risk reduction</p>	
52.	<p>What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour</p> <p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market</p>	

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valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.

Due to their long term nature IORPs have a long term funding policy they have a greater ability for short term shock absorption, thereby avoiding procyclical behaviour and contribute to the global financial stability and European economy.

Therefore, BVPI-ABIP advises EIOPA to plead for an IORP Directive which stimulates a countercyclical policy and an impact assessment in order to see the macro-economic effects of a revision of the IORP Directive.

BVPI-ABIP agrees in principle with EIOPA advice on article 136 and 141. However, the current method to calculate the equity dampener is not appropriate for IORPs. The average return period should at least be increased from three till six years. If this is not retained, BVPI-ABIP favours leaving out the equity dampener (option 1).

Besides that BVPI-ABIP asks EIOPA also to pay attention to the relation between counter cyclicity and recovery periods, capital requirements and the discount rate for the valuation of assets and liabilities which were addressed in the previous questions. For example, if a low discount rate is stipulated in economically bad times and a high one in economically good times that means that IORPs will be poor in bad times and rich in good times. This leads to pro-cyclical behaviour. The same holds for an obliged derisking of the investment mix during an economic downturn.

53.

Do stakeholders agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in

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	<p>relation to transparency and accountability should also apply to IORPs?</p> <p>BVPI-ABIP considers that transparency and accountability should be encouraged; but is concerned about how this will be implemented and how this can be applied because the proportionality should always be taken in consideration.</p> <p>BVPI-ABIP wishes also to stress that the proposed principles may lead to an important increase of the supervision costs, which may in the end have a negative impact on the final pensions or the costs of the pension engagements in these countries where the costs of the supervision are buried by the IORPs.</p> <p>Therefore the proportionality trade-off between extra burdensome on the IORPs en the extra efficacy and transparency of the supervision should always be taken in consideration.</p>	
54.	<p>Has EIOPA identified correctly those issues – need to enhance benefit security, differences between IORP and insurance supervision, and diversity of IORPs - where there should be differences between insurers and IORPs on supervision and transparency and accountability?</p> <p>The need to enhance benefit security, differences between IORP and insurance supervision and diversity of IORP are indeed issues that justify a difference in treatment between insurers and IORPs.</p> <p>BVPI-ABIP would also underline other differences between IORPs and insurers:</p> <p>The governance structure justifies different treatment: the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer where IORPs are concerned justify a difference in treatment.</p> <p>IORPs are not-for-profit and often have no staff, and no shareholders. There is therefore no incentive to increase “business” or “profits”, or to “diversify” activities, which is different</p>	

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	<p>from many (though not all) insurance companies.</p> <p>The different roles and functions of IORPs and insurers should be reflected in regulation.</p>	
55.	<p>Do stakeholders agree with the recommendation that supervisory authorities should have broadly the same powers to require IORPs to conduct stress tests as it has in respect of insurers?</p> <p>No. We think that supervisors have already this power to ask for stress tests under the current IORP Directive</p> <p>BVPI-ABIP underlines that the vehicle/function/structure of an IORP is fundamentally different from an insurance company; therefore BVPI-ABIP considers that if the regulator considers it necessary to conduct a stress test on IORP's this has to be a tailor made stress test which takes in consideration all the particular characteristics of an IORP as well as the principle of proportionality.</p>	
56.	<p>Do stakeholders agree with reinforcing the sanctions regime for IORPs?</p> <p>BVPI-ABIP thinks that it is not needed to reinforce the sanctions regime for IORPs. A tight follow up can be an effective support to a principle based supervisory regime. We oppose however administrative penalties</p>	
57.	<p>Should knowledge of the imposition of penalties be public or restricted?</p> <p>BVPI-ABIP would agree with paragraph 15.4.3., that an overall obligation to make penalties public would not be suitable.</p> <p>BVPI-ABIP agrees with EIOPA that further analysis is needed here.</p>	
58.	<p>Should host states be able to impose sanctions on IORPs without going through the home state?</p> <p>No. Host states should not be able to impose direct sanctions on IORPs.</p> <p>The IORP directive underwrites and promotes the mutual recognition of the competences of</p>	

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	<p>the different national regulators; if host states could impose direct sanctions against IORP's this will not only lead to an extra overhead cost, but possibly also to contradictive messages/requirements from the different supervisors to the same IORP.</p> <p>BVPI-ABIP considers that the updated Budapest protocol should stay the basis of the collaboration between supervisors and that eventual differences in interpretation should be resolved within EIOPA, taking in consideration the unique competence of the host state on his social and labour law.</p>	
59.	<p>What is the view of stakeholders on whether the requirements for the supervisory review process for insurers should also apply to IORPs?</p> <p>No. The supervisory review process for insurers is not a good starting point for IORPs. IORPs need an own supervisory review process –written from the scratch- that takes in consideration their own proportionality, diversity and their own characteristics.</p> <p>BVPI-ABIP would prefer option 3: Member States should be free to determine the most suitable ways of supervision for their IORPs.</p> <p>BVPI-ABIP would observe that in Belgium and probably many Member States, solid supervisory review processes are in place for IORPs and EIOPA correctly says that articles 13 and 14 of the IORP Directive already contain provisions relating to supervisory powers and information to supervisors.</p> <p>Should supervisory review powers be introduced however, they should be subject to the proportionality principle and should not lead to unreasonable additional costs or burdens for the IORPs.</p>	
60.	<p>What is the view of stakeholders on whether the requirements for capital add ons for insurers should also apply to IORPs?</p>	

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	<p>BVPI-ABIP rejects the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule. However if the European Commission would go through with this idea, we would like to give the following comments.</p> <p>However BVPI-ABIP wishes to underline as well that in his point of view "capital requirements" cannot be a way to deal with eventual governance problems within an IORP.</p>	
61.	<p>Do stakeholders agree that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs?</p> <p>BVPI-ABIP agrees with EIOPA that material elements of article 38(1) of the Solvency II Directive could usefully be introduced in IORP Directive.</p> <p>We would like to draw the attention on the possible conflicting situation between the requirement of access to all information by the supervisor even with all the outsourced activities and the eventual (legally required) profession secret</p>	
62.	<p>What is the stakeholders` view on proposed changes to the definition of home state and rules on chain outsourcing?</p> <p>BVPI-ABIP supports the suggestion of EIOPA that the IORPs home state should be defined as the one where the IORP was authorized or registered (please check also our answer on question 5).</p>	
63.	<p>Do stakeholders agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality?</p> <p>We agree with the principle that the material elements of the Solvency II requirements for</p>	

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	governance apply to IORPs, subject to proportionality. A first proportionality check must be made at level 1. We would like EIOPA to conduct an impact assessment in order to gain knowledge of the real impact of the new requirements	
64.	<p>Has EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements?</p> <p>Yes, remuneration policy and member participation are areas of difference between IORP's and insurers.</p> <p>A proper impact assessment regarding the efficiency and the effectiveness of such new governance rules to IORPs seems necessary.</p>	
65.	<p>Do stakeholders agree the introduction of the same fit and proper requirements for IORPs as were introduced for insurance and reinsurance undertakings in article 42 (1) of the Solvency II Framework Directive?</p> <p>BVPI-ABIP disagrees with EIOPA on the proposal that the same 'fit and proper' requirements have to be applied as for insurance and reinsurance undertakings foreseen in Art. 42 (1) of the Solvency II Framework Directive</p> <p>Any fit and proper requirements should not affect the participation of members, beneficiaries and social partners in the IORP governance structure.</p> <p>The "fit and proper" requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of "fit and proper" requirements that are be similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of the IORPs. A proper impact assessment is</p>	

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	<p>necessary in order to make sure that the requirements are proportionate for IORPs.</p> <p>It is important that the Board as a whole has an adequate level of expertise; it should not be required that each and every member of the Board of the IORP fulfil all "fit" professional expertise requirements. BVPI-ABIP agrees with EIOPA's assessment that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs.</p>	
66.	<p>Do stakeholders agree with the advise that:</p> <p>a. The fit and proper requirements should apply at all times</p> <p>b. There should be effective procedures and controls to enable supervisory authorities to assess fitness and propriety</p> <p>Yes, fit and proper requirements should apply at all times and Yes, there should be procedures and controls to enable supervisory authorities to assess fitness and propriety but there should be sufficient flexibility so as to allow these procedures to be fulfilled in another member state.</p>	
67.	<p>What powers should supervisory authorities have in the event that the fit and/or proper requirements are not fulfilled?</p> <p>Supervisory authority should be granted advisory powers on the nomination of a candidate before such nomination is decided within the IORP. This can be done by asking the IORP to complete a standard questionnaire on the fitness and propriety of the candidate, to be sent to the supervisor who needs to provide the IORP with its advice on the nomination of the candidate. This will avoid the need for an ex-post intervention of the supervisor.</p>	
68.	<p>What is the view of stakeholders on the proposed principles of the revised IORP</p>	

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directive? How do stakeholders evaluate the positive and negative impact of the proposed risk management principles?

All IORP's should have an effective risk management system but as the nature of the risks, the size of IORP and its complexity might differ, the qualitative measures and requirements should be in proportion to the risk profile of the IORP (proportionality), and risk management should be principle based rather than rule based.

Risk management should be looked at in function of the risk sharing mechanism of the pension scheme. When the investment risk is not borne by the IORP the focus should concentrate on operational and compliance risk. Basically ALM is a pension scheme issue, irrespective of the funding vehicle. Investment and liquidity risks are relevant in all cases but should be looked at taking the long term nature of the commitments into account.

BVPI-ABIP strongly supports the view expressed in 20.3.28 that IORPs should not be imposed a higher burden than already exists under Solvency II for insurance companies taking similar commitments.

Prioritisation and proportionality should also be taken into account.

As EIOPA, BVPI-ABIP also emphasizes the need for different impact studies to assess the real impact of the new requirements.

69.

Do you agree with EIOPA that ORSA is, in principle, suitable for IORPs? Please provide evidence/reasons supporting your view.

BVPI-ABIP is in favour of option 1 and believes it will be more efficient to focus on the risk management function which includes concepts included in the ORSA rather than pile up several requirements that have the same purpose. It will create an accumulation of legislation and requirement which is misleading and too burdensome.

BVPI-ABIP considers that ORSA as such is only suitable for IORPs bearing investment risk themselves.

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	<p>In other situations ORSA would actually have to address the pension scheme as a whole. This is coherent with the holistic approach and raises the same questions of scope and level playing field.</p> <p>So if the sponsor is bearing the risk we do not see what ORSA would add to the risk management principles laid down in CFA 15.</p>	
70.	<p>What should be the scope of ORSA for IORPs where members bear all the risks? How do you assess the impact of introducing ORSA?</p> <p>If the sponsor is bearing the risk we do not see what ORSA would add to the risk management principles laid down in CFA 15.</p>	
71.	<p>What is the stakeholders' view of the necessity to perform ORSA in the event that the holistic balance sheet approach is adopted?</p> <p>ORSA can be seen as a qualitative development of the holistic balance sheet. However BVPI-ABIP rejects as stated earlier the idea of imposing capital requirements based on mark-to market valuation of liabilities as a general rule and the presentation of this in a holistic balance sheet.</p>	
72.	<p>What is the view of the stakeholders on the proposed new explanatory text on the whistle-blowing obligation of the compliance function?</p> <p>Compliance function should not have a whistleblowing function towards the supervisor.</p>	
73.	<p>What is the view of the stakeholders on the proposed new explanatory text on the scope (the fact that the compliance function should include all legislation with an impact on the operations of an IORP)?</p> <p>Yes, the compliance function should include all legislation relevant for IORP's.</p>	
74.	<p>Do stakeholders agree that the material requirements of internal audit in respect</p>	

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	<p>of insurers should also apply to IORPs, subject to proportionality and other changes?</p> <p>Yes, subject to proportionality, material requirements of internal audit in respect of insurers should also apply to IORP's</p>	
75.	<p>What is the view of stakeholders on the proposed whistle-blowing obligation of the internal audit function?</p> <p>Internal audit function should not have a whistleblowing function towards the supervisor</p>	
76.	<p>What is the view of the stakeholders on the role and duties of the actuarial function of IORPs?</p> <p>A distinction should be made between the functions of actuary of the scheme and actuary of the IORP. The actuary of the scheme should advise on the contributions, funding level, actuarial assumptions, irrespective of the funding vehicle(s), IORP, insurance company, a combination of both or other. That mission is long term oriented (long term equilibrium of the scheme) and the stakeholders are the social partners (sponsor and representatives of the members).</p> <p>The actuary of the IORP should oversee the calculation of technical provisions (on a short term basis), advise on mortality tables, reinsurance, etc. and the way operations are run within the IORP</p>	
77.	<p>Are the requirements of solvency II the correct starting point for the actuarial function?</p> <p>The requirements should be flexible and proportional enough to meet a broad scope of situations.</p>	
78.	<p>Do you agree with the importance of independence of the actuarial function? What do stakeholders perceive as the necessary criteria for the independence of the actuarial function?</p>	

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	ABIP-BVPI is of the opinion that the function may be performed by a member of the staff, provided he has the necessary qualifications, his duties are clear and his independence is guaranteed. Since the appointment (renewal) of the actuary and the endorsement of his recommendations depends on a good working relationship with the stakeholders, the system relies more on common understanding and arm-length relationship than on independence.	
79.	Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advise? Are there any other impacts that should be considered?	
80.	Do stakeholders agree that the material requirements on insurers in respect of outsourcing should also apply to IORPs? BVPI-ABIP does not agree with EIOPA that the material requirements on insurers in respect of outsourcing should also apply to IORP's. The starting point should be Art. 9 of the IORP Directive and respect to the specificities of IORP's.	
81.	CfA 20 Outsourcing Do stakeholders agree with the standardisation of outsourcing process in order to enlarge the cross border activity? Yes, standardisation of outsourcing process requirements will facilitate but have only a minor impact on the development of cross border activity.	
82.	What are the minimum outsourcing contract elements stakeholders consider as useful to ensure the protection for IORP members and beneficiaries? Minimum outsourcing contract elements could include: (1) rights & obligations of the service provider and the IORP, (2) confidentiality and security features, (3) timely and accurate reporting and communication of information, (4) commitment of the service provider to	

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	grant access to information by the IORP and the supervisors on an on-going basis, (5) defining of applicable laws and regulations, (6) defining auditing rights (by both the internal and the external auditor and possibly also by the compliance officer), (7) requirement of an internal controls certification (8) possibility to modify and/or terminate the agreement and obligation for the external service provider to return all necessary data to the IORP and/or to transfer them to another external service provider.	
83.	<p>What is the view of the stakeholders on the proposed treatment of depositaries?</p> <p>Custodians should be able to provide services cross-border (no need to require a custodian in the home country of the IORP). Their primary activity should be the fundamental custody and safekeeping of IORP assets. A basic oversight task (similar to UCITS) may have a beneficial effect.</p>	
84.	<p>How do stakeholders evaluate the positive and negative impacts of the proposals?</p> <p>BVPI-ABIP is worried about and asks EIOPA to take in consideration the impact on a possible increase the costs, which might have a negative effect on the benefits paid out to the beneficiaries.</p>	
85.	<p>What do stakeholders anticipate in terms of cost and other consequences of the implementation of a compulsory regime regarding the appointment of a depositary under options 2 and 3 for: (a) the safe-keeping of assets; (b) oversight functions?</p> <p>It is difficult to assess the consequences. But if defined carefully and limited, the cost of safekeeping and oversight functions may become "standardized", meaning that due to competition (cross border) these costs will remain low.</p>	
86.	<p>What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements regarding: (a) the need for a written contract; (b) the role of a depositary in terms of safe-keeping; (c) the liability regime of depositaries; (d) the list of minimum oversight functions that should be perform; (e) conflict of interest?</p>	

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	<p>We strongly suggest in the best interest of scheme members to officialise the relationship via a written contract. We also suggest that the content has some minimum rules imposed by the regulator. In this, certainly the limitation of liability with regard to safe-keeping should be forbidden, and define a minimum list of oversight functions determined by the regulator.</p> <p>A procedure to cope with possible conflict of interest should also be part of the agreement. We strongly advise the condition of "Chinese walls" between activities with probable conflict of interest.</p>	
87.	<p>Do stakeholders agree that the list of minimum oversight functions that should be performed by a depositary is appropriate?</p> <p>Yes. We view the basic functions as providing compliance, execution check and certification of asset ownership.</p>	
88.	<p>What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements that should be verified in case a depositary is not appointed?</p> <p>We think that small IORP's may incur difficulties organizing the requirements in case there is no custodian. This might involve a risk for scheme members as the implementation of the general requirements depends on the scale of the fund.</p>	
89.	<p>Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advise? Are there any other impacts that should be considered?</p> <p>BVPI-ABIP considers that the analysis of the options covers most of the pros and cons; but wishes to add and underline to this analysis the importance of the extra cost burden, which may have an impact on the pensions in this member states where the costs of supervision are buried by the IORP's.</p>	

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<p>90.</p>	<p>Would stakeholders welcome convergence of provision of information to supervisors: (i) completely; (ii) in certain fields; (iii) not at all.</p> <p>Taking in consideration the huge variance and differences among IORP's and pension schemes in and between the different members states, BVPI-ABIP considers that a convergence of provision of information to supervisors may be interesting in certain fields.</p>	
<p>91.</p>	<p>Do stakeholders believe that additional information requirements - besides the current ones - are not only necessary for DC schemes, but also for DB schemes?</p> <p>The EIOPA ideas have a lot to do with consumer protection. BVPI-ABIP believes that this starts from a wrong assumption. It assumes that IORPs are commercial operators providing a product, and scheme members are consumers of this product. We would like to stress the fact that IORPs are very often not for profit organisations that do not compete on a market. The benefits managed by IORPs are not simple products. They are in most cases mandatory because they are part of collective labour agreements in industry sectors, or because they are part of the employment relation between an employer and his employees. They are as such not consumer products that are consumed. In these cases they do not need as many "pre-contractual information" as customers of insurance companies. Even during their membership their information needs are different from insurance, because the contributions paid for them by their employers are an unchangeable part of their salary.</p> <p>BVPI-ABIP rejects the approach that collective pension scheme members are to be considered as consumers. The information requirements as are laid down in Solvency II may fit customers and stakeholders of insurance companies. They are far too heavy for IORP's.</p> <p>BVPI-ABIP does not believe that additional information requirements are necessary for DB schemes.</p>	

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92.

Are stakeholders happy with the potential introduction of a KIID-like document for DC schemes and with its contents as envisaged in the draft EIOPA advise? In particular are stakeholders happy with the introduction of a document (KID) that would contain information beyond investment? How important it is that this document facilitates comparisons between IORPs?

As stated earlier BVPI-ABIP rejects the approach that collective pension scheme members are to be considered as consumers. The information requirements as are laid down in Solvency II may fit customers and stakeholders of insurance companies.

BVPI-ABIP believes however in the introduction of a KIID-like document for DC schemes, adapted to the specific situation of IORPs, ad proposed by EIOPA and containing information beyond investment information. (i.e. a more general KID or Key Information Document). BVPI-ABIP agrees that it should be made clear that this KID is not a source of legal commitments.

Since there is no competition between occupational pension schemes, the BVPI-ABIP does not see added value in giving scheme members information on the comparative "competitively" of the scheme. It is not so important that the KIID facilitates comparisons between IORPs. The main objective of the KIID should be to provide for a better understanding of the member of his pension accrual under a DC scheme.

In this discussion therefore, it should be kept in mind that KIID documents were designed for investment products, whereas occupational pensions, according to the BVPI-ABIP, are not "products".

In the BVPI-ABIP's opinion it will be difficult to draft a common format of pre-enrolment document and annual benefit statement, because of the differences in the members states'

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	<p>pension schemes and the specific information requirements based on the national social and labour legislation. The implementation of the principles regarding information requirements as provided in the current IORP Directive can best be decided upon at a member state-level (as is the case today).</p>	
93.	<p>How would stakeholders suggest communicating in the KID the risk/reward profile and/or the time horizon of different investment options? Do they think that the risk ranking should be the same for all time horizons, or should vary with time horizons, allowing for a more favourable ranking of equity-oriented investment options for long horizons? How should performance scenarios be conceived? Should they vary for different asset allocations, allowing for a risk premium for equity-oriented investment options? What a reasonable measure of the risk premium would be?</p> <p>BVPI-ABIP indeed feels that the risk ranking should vary with the time horizon. In addition, performance scenarios should vary for different asset allocations allowing for a risk premium for equity-oriented investment options. It should in any event be clear that this information does not contain any guarantees as to risk and/or performance.</p>	
94.	<p>Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?</p> <p>BVPI-ABIP agrees with the introduction of a personalised annual statement to be delivered to each member, but remembers that this might strongly interfere with the existing social and labour law (e.g. Belgium where a personalised annual statement is already requirement under SSL).</p> <p>Only when the costs are actually levied on the return or the premium (and not if the cost is</p>	

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	<p>100% borne by e.g. the sponsoring undertaking), should the annual statement contain information on the costs. This information should remain general (for instance : percentage of return attributed to costs in total).</p> <p>To the extent that the KIID would only be an information document, making clear that no legal rights can be derived from it, BVPI-ABIP doubts whether there should be coordination between the annual statement and the KIID.</p>	
95.	<p>What is the view of stakeholders as regards the level of harmonisation of information requirements that can be reasonably achieved with the revised IORP directive? Besides those envisaged by the EIOPA advise, are there other parts of the regulation that should be harmonized?</p> <p>BVPI-ABIP supports the idea of good information provision to the scheme members</p> <p>BVPI-ABIP agrees with the EIOPA statement in 29.2.79</p> <p><i>"For all these reasons, EIOPA believes that it is not appropriate to extend Articles 51-56 of Directive 2009/138/EC to IORPs. Still, EIOPA believes that it is important for members to have key information and a basic understanding of the financial solidity of the IORP. Therefore a slight redrafting of article 11.4.d would be useful. It should refer to the need for members to receive yearly information on the financial solidity of the IORP."</i></p> <p>Stating that Articles 51-56 from Solvency II should not apply to IORPs.</p>	
96.	<p>Do stakeholders agree with the impact assessment of the EIOPA proposals?</p> <p>BVPI-ABIP is of the opinion that the additional information requirements as proposed by EIOPA will indeed lead to additional compliance costs for IORPs and additional supervisory costs for supervisory authorities. BVPI-ABIP would therefore urge for proportionality between the additional information requirements (mostly for DC schemes) and the additional costs they would lead to.</p>	