

<b>Comments Template on EIOPA-CP-11/006</b> <b>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline</b> <b>02.01.2012</b> <b>18:00 CET</b>
Company name:	<b>Chris Barnard</b>	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.  <i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word <b>Public</b> in the column to the left and by inserting the word <b>Confidential</b>.</i>	<b>Public</b>
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>.</li> <li>⇒ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.               <ul style="list-style-type: none"> <li>○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p>		
<b>Question</b>	<b>Comment</b>	
General comment	<p><b>Please note that the comments expressed herein are solely my personal views.</b></p> <p>Thank you for giving us the opportunity to comment on your Response to Call for Advice on the</p>	

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	<p>Review of Directive 2003/41/EC: second consultation.</p> <p>Please note that I have also provided comments on the previous consultation covering scope, cross-border activity, prudential regulation and governance.</p> <p>Many of the proposals appear to be reasonable on their own. In total however, the proposals appear to be onerous, and may increase the cost burden significantly across IORPs. Therefore I would recommend that the additional requirements and cost burden should be considered both for each proposal in isolation, and for all of the proposals in total.</p>	
1.	I agree with the analysis of the options as laid out in the advice.	
2.		
3.	<p>This is a deeply political issue. Without further guidance from the Commission, I would support either option 1 or option 2.</p> <p>I agree with your doubts concerning option 3.</p>	
4.		
5.	<p>Broadly yes. More emphasis could be given to the diversity and complexity of pension arrangements, and the difficulty in integrating a pension arrangement with different Member States' SLL and tax treatments. This is the main reason for the lack of demand for cross-border activity here.</p> <p>I personally believe that proposing option 2 is a very bold step.</p>	
6.	I agree with the proposed principles of ring-fencing.	
7.	The positive impacts of ring-fencing outweigh the negative impacts. Ring-fencing may cause the SCR to increase due to reduced risk diversification, but this is offset by the appropriately greater protection afforded to members and beneficiaries in many cases. Given that occupational pensions can be considered as deferred income, and are effectively earned as they accrue, I would argue that this protection is more important than any reduction in risk diversification.	

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8.		
9.	I would support the introduction of privilege rules in the national legal framework. However, Member States should have the option to determine if the precedence of members over creditors is absolute. This would improve harmonisation to some extent in this important area, whilst permitting Member States some flexibility to tailor the rules to their own situation.	
10.	I broadly agree with the analysis of the options as laid out in the advice.  Regarding Paragraph 7.3.20, I do not believe that there is enough quantitative analysis to conclude that "implementation of option 2 is likely to produce overall benefits slightly exceeding associated costs".	
11.	I believe that this will clarify the distribution of competences between the Home and Host supervisors. However, I do not think that this (alone) will have a very positive impact on the volume of cross-border activities. See also my response to question 5.	
12.	In theory I would support the holistic balance sheet proposal, which should apply to all IORPs, as this is more transparent and informative, increases comparability across IORPs, and will lead to a harmonised approach across all IORP types.	
13.	Yes, I agree that assets of IORPs should be valued on a market-consistent basis. This is more objective, realistic and appropriate.	
14.	I would support option 2, which would amend the current IORP Directive to state that the valuation of technical provisions should be done on a market-consistent basis. This is more objective and would ensure that the valuation of liabilities was consistent with the valuation of assets, which should also be market-consistent. See also my response to question 13.  I accept a need for further discussion to address procyclicality.	
15.	Yes. The own credit standing of IORPs should not be taken into account when valuing liabilities. Including own credit standing leads to the counter-intuitive result that an IORP would "gain" from a reduction in credit standing. This has been observed in many banks' recent quarterly reporting (see	

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	<p>"Fairyland value accounting", Financial Times, 23 October 2011), where up to 80% of banks' reported quarterly net profits resulted from falls in their own credit standing. This is imprudent and unrealistic.</p> <p>Excluding own credit standing is also consistent with Solvency II (see Article 75(1) of the Solvency II Directive) and IFRS (for example see Paragraph 38 of the latest exposure draft on Insurance Contracts, ED/2010/8, issued by the IASB).</p> <p>For a fuller discussion on this issue please see the IASB Staff Paper "Credit Risk in Liability Measurement", published June 2009; available at <a href="http://www.ifrs.org/NR/rdonlyres/F57B3E62-41F1-4817-B32D-531354E03D10/0/CreditRiskLiabilitStaff.pdf">http://www.ifrs.org/NR/rdonlyres/F57B3E62-41F1-4817-B32D-531354E03D10/0/CreditRiskLiabilitStaff.pdf</a></p>	
16.	<p>I would support the proposal that a recital should be inserted in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards. This would allow for greater consistency between accounting standards and supervisory standards, and would reduce the regulatory burden on IORPs where the requirements were consistent.</p>	
17.	<p>I agree that Articles 76(1), (4) and (5) should be adopted, with appropriate amendments as suggested, into a revised IORP Directive.</p> <p>Regarding Article 76(3), I would support option 2. This would include Article 76(3) in a revised IORP Directive without amendment. This would then be internally consistent with a market-consistent valuation of assets and liabilities.</p>	
18.	<p>I would support option 2, that the risk margin in technical provisions should be calculated according to Solvency II. This is internally consistent with the Solvency II-like, market-consistent approach to the calculation of technical provisions. This would lead to more consistency in supervisory standards, and comparability of technical provisions, between IORPs and insurance companies, and more comparability of technical provisions between different IORPs.</p>	
19.	<p>I would accept that the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions are reasonably drafted and quite clear. However, I am not sure that they are entirely appropriate. In a Solvency II-like, market-consistent</p>	

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	<p>approach to the calculation of technical provisions, we should be considering the full economic view. If we do not take into account future cash-flows leading to, or resulting from, the future accrual of pension rights, then we are not considering the full economic view, which may have adverse consequences.</p> <p>The supporting arguments in Paragraphs 9.3.56 – 9.3.61 are not unreasonable, but I do not think that they are complete. For example, Paragraph 9.3.57 states that:</p> <p style="padding-left: 40px;">“Solvency II contract boundaries are defined to clarify even further which cash-flows exactly have to be taken into account. The basic idea is that whenever risks can arise from future cash-flows and the undertaking has no unilateral right to reject the cash-flows and with it the corresponding risks then these cash-flows have to be taken into account”.</p> <p>This supports the principle that we should allow for all future accruals, where the IORP cannot unilaterally reject cash-flows and corresponding risks. Paragraph 9.3.60 further states that:</p> <p style="padding-left: 40px;">“The contract boundaries in time of occupational pension schemes may be ill-defined and/or there may be no direct relationship between contributions and the accrual of pension rights”.</p> <p>I agree that these issues require further consideration, but regardless of whether there is a direct relationship between contributions and the accrual of pension rights, I believe that the absolute accrual of pension rights and their corresponding risks should be the defining factor here.</p> <p>I am also not convinced that the proposal is fully consistent with the proposed holistic balance sheet framework.</p>	
20.	<p>Yes, I agree that the best estimate of IORPs should be calculated gross without deduction of amounts recoverable from reinsurance contracts and special purpose vehicles. This should allow for a more complete and detailed analysis of the components of the best estimate, with greater clarity thereon. It is also consistent with Solvency II.</p>	
21.	<p>In general I agree with the analysis presented in Paragraphs 9.3.64 – 9.3.79, 9.3.88 – 9.3.91 and</p>	

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	<p>9.3.98 – 9.3.101 regarding the interest rate used to establish technical provisions.</p> <p>I would generally support option 2: using the risk-free interest rate to establish technical provisions is internally consistent with a market-consistent valuation of assets and liabilities. It is also consistent with Solvency II.</p> <p>However, option 3 is interesting. This effectively splits the funding position into two levels: Level A uses a fully harmonised risk-free rate and shows the market-consistent solvency view; Level B uses expected returns on assets and shows a “real world” funding view, which could be used to steer the pace of funding and the schedule of contributions (budgeting). My concern here is that this dual approach could be confusing, and it might create public, member and beneficiary expectations that 100% funding on Level B would be adequate to secure pension entitlements, whereas Level B calculations are generally incomplete and inadequate as a measure of security.</p> <p>(An example of the confusion that can arise with using different bases for determining solvency, funding and budgeting occurred in the UK with the Minimum Funding Requirement (MFR), introduced in 1997. Many pension schemes which were 100% funded on this MFR basis had insufficient funds, when wound up, to fully secure members’ accrued pension rights. After securing the pensions of those already retired, the active members often received only a small fraction of their expectations.)</p> <p>As a minimum, any implementation of option 3 should be coupled with clear and strict presentation and communication requirements, in order to better manage the expectations of members and beneficiaries.</p>	
22.	<p>Yes, I agree that the 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. This is prudent and consistent with basic valuation principles.</p>	
23.	<p>I agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II.</p> <p>I would support that discretionary benefits should be included in the best estimate of technical provisions. This would be more consistent with Solvency II, and also with the proposed holistic</p>	

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	<p>balance sheet framework.</p> <p>The exact definition of discretionary benefits could depend on SLL and case law. Additional guidance and interpretation could be provided at Level 2.</p>	
24.	<p>I 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. This is consistent with basic valuation principles; that guarantees and options should be valued at outset, rather than when called upon (or triggered). Given the complexity that could be involved here, and the limited resources available, I agree that IORPs should be able to apply the principle of proportionality in their estimations.</p>	
25.	<p>Yes, I agree that Article 80 on segmentation should be introduced into a revised IORP Directive. This would be more complete compared with the existing requirements under Article 15 of the IORP Directive.</p>	
26.	<p>I would support option 2, which would apply Article 81 of the Solvency II Directive to IORPs. I do not think that this is excessively burdensome for those IORPs that would have amounts recoverable from reinsurance contracts and special purpose vehicles.</p>	
27.	<p>I agree that introducing Article 82 of Solvency II into a revised IORP Directive would be useful, and consistent with basic valuation and risk management principles, and it would be more complete compared with the existing requirements under Article 15 of the IORP Directive.</p>	
28.	<p>I would strongly support the introduction of Article 83 of Solvency II into a revised IORP Directive. Experience analyses and analysis of movement and variances is a critical part of understanding and managing the assumptions as part of an actuarial control cycle.</p>	
29.	<p>I would support the introduction of Article 84 of Solvency II into a revised IORP Directive. I agree that this power already exists through Article 14 of the IORP Directive, but it might increase clarity to explicitly state this.</p>	
30.	<p>I agree that it would be useful to introduce Article 85 of Solvency II into a revised IORP Directive. I agree that this power already exists through Article 14 of the IORP Directive, but it doesn't do any</p>	

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	harm to explicitly state this.	
31.	I agree that a new IORP Directive should allow for the Commission to adopt Level 2 implementing measures where appropriate. The extent of any implementing measures would depend on the details of the new IORP Directive.	
32.	Ideally, 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. But this depends on achieving a sufficient degree of harmonisation that would reflect the nature of IORPs across Member States.	
33.	<p>I broadly agree with the analysis regarding sponsor support in Paragraphs 9.3.185 – 9.3.223.</p> <p>This is a very complicated issue. In principle I would support 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, as this is more transparent and is also consistent with the proposed holistic balance sheet framework. However, I would recommend a higher threshold for recognition here, in order that inflows of economic benefits are not inappropriately and imprudently allowed for in the valuation. This is especially important in times of financial distress when these “contingent assets” are most likely to be called on, and are potentially most at risk.</p> <p>If sponsor support is shown as an asset in the IORP balance sheet, should we also ensure that it is similarly shown as a liability in the sponsor’s balance sheet? Could this have a negative impact on the supply of (employer sponsored) occupational retirement provision in the EU?</p>	
34.	<p>I support that Articles 87-99 of Solvency II on own funds, with appropriate amendments, should be applied to IORPs.</p> <p>I would suggest that letters of credit should be given prudent consideration, especially where the letter-of-credit issuing bank is an affiliate.</p>	
35.	I agree that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive, subject to requirements on their issuance and redemption. Subordinated loans can serve as a useful security mechanism. This will increase flexibility by offering additional protection	



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	possibilities to members and beneficiaries.	
36.	<p>I agree with the analysis on whether to introduce or not a uniform security level for IORPs across Europe. I also accept that the definition of a specific probability for the confidence level is highly political and I therefore agree with EIOPA's decision not to recommend a specific probability.</p> <p>I would support option 1, which sets up a harmonised confidence level. I would suggest that any benefit adjustment mechanisms defined by SLL of Member States should be allowed for in the calculation of the technical provisions. The alternative for a non-harmonised confidence level, in which benefit adjustment mechanisms would be reflected in a lower confidence level, is simply too subjective, intransparent and potentially confusing.</p> <p>I fully support Paragraph 10.3.39, in that these issues must be properly communicated and explained, in order to better manage the expectations of members and beneficiaries concerning the security of their retirement provision.</p>	
37.	<p>Yes. The confidence level should apply to a one-year time horizon. This is generally accepted and consistent with insurance companies and banks. It would be difficult to calibrate a time horizon much greater than this.</p> <p>I support the concept of "same risks, same rules, same capital". Therefore I do not agree with Paragraph 10.3.29 that a multi-year time horizon "may be more appropriate where risks are not observable over a short period, such as long-tailed liability business or mortality developments", especially given that we currently apply Solvency II successfully to insurance companies with long-tailed liability business, such as whole life, pension and annuity contracts.</p>	
38.	<p>I agree in principle that the Solvency II-rules for calculating the solvency capital requirement (SCR) should be applied to IORPs, taking into account their specific security and benefit adjustment mechanisms. I accept that this is potentially very burdensome for IORPs, especially given the number of small-sized IORPs, and the current lack of available skilled resources. Therefore the principle of proportionality should apply here in order not to unduly burden small and less complex IORPs.</p>	
39.	<p>This is a balanced and difficult issue. Given my response to question 38 I would suggest that we need</p>	

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	<p>a proportionate approach here. The absolute minimum requirement should be for IORPs to assess the SCR on a three-yearly basis, with a simplified approach in intervening years. The simplified approach could make use of interpolation or roll-forward techniques for example, or only require the major risk factors to be assessed (e.g. interest rate, equity and credit risks). IORPs could be required to make additional assessments at any time if risks have changed significantly, or if required by the supervisor.</p> <p>We should bear in mind that even yearly frequency is generally inadequate during periods of financial distress.</p>	
40.	<p>I would agree with imposing a minimum capital requirement (MCR) upon IORPs. This would be consistent with Solvency II and allow for a more frequent solvency assessment. I would recommend that the MCR calculation should be proportionate and employ a simplified approach (low complexity, re Paragraph 10.3.85). I agree with Paragraph 10.3.87 that the structure of the calculation should use readily available variables, although the definition of "written premiums" may need to be clarified in relation to IORPs. I would support a quarterly calculation for the MCR, which should be based on the latest annually-determined SCR.</p>	
41.	<p>The analysis regarding pension protection schemes is not unreasonable. However, I disagree with the analysis in Paragraphs 10.3.124 – 10.3.125 on comparisons between pension protection schemes and insurance guarantee schemes. Both serve a similar function, which is to provide last-resort protection to members and beneficiaries / policyholders, when IORPs / insurance companies are unable to fulfil their commitments, and we should consider substance over form. If pension protection schemes are included in the solvency framework, then there will be an unlevel playing field with the insurance sector.</p> <p>I would caution against aggressively including pension protection schemes in the solvency framework for the following reasons:</p> <ul style="list-style-type: none"> <li>- valuations would be less comparable between IORPs with differing levels of pension protection;</li> <li>- the valuation of the pension protection is very subjective in the tail conditions</li> </ul>	

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	<p>that would be expected to apply when the protection should be called upon;</p> <ul style="list-style-type: none"> <li>- the valuation of the pension protection could become a multi-agent problem, as pension protection schemes apply to multiple IORPs. This is different from sponsor support, where the only other agent to consider is the sponsor itself;</li> <li>- their inclusion could lead to systemic issues in the sense that all the IORPs covered by the same pension protection scheme would presumably hold lower assets and capital. This could lead to a greater possibility of systemic call on the pension protection scheme in times of financial distress.</li> <li>- The above result, i.e. IORPs systemically holding lower assets and capital almost implies that the pension protection scheme is a "joint sponsor" of the IORPs, rather than last-resort protection.</li> </ul> <p>If pension protection schemes should be included in the solvency framework, I would rather support option 2, which would include them in the solvency framework through the credit risk of the sponsor used in the valuation of sponsor support. This has the advantage of simplicity over option 1, which is too complex and subjective to include in a robust valuation.</p> <p>Note that under option 2 we can still value and disclose the quantitative impact of the pension protection scheme by valuing the sponsor support with and without the adjustment to the credit risk of the sponsor due to the pension protection scheme. The differences in the two calculations of capital requirements and the valuation of the sponsor support as an asset would quantify the protection provided by the pension protection scheme.</p>	
42.	<p>I agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members. This would be consistent with Solvency II.</p> <p>I would recommend option 2 for simplicity; however those IORPs implementing an internal model-type approach should be permitted to make a more accurate assessment of operational risk within their internal model framework.</p>	
43.	<p>I agree with the analysis regarding the duties of IORPs and the powers of supervisors in the case of</p>	

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	<p>deteriorating financial conditions as introduced by Articles 136 and 141 of Solvency II.</p> <p>I strongly agree that any application of such provisions to IORPs should reflect the characteristics of IORPs and pension arrangements generally. The most important characteristic of IORPs is not necessarily the long-term nature of their liabilities and investment time horizons, as this could equally apply to insurance companies, but rather that the IORP is linked with the sponsor, which in many cases is the employer. Recitals (14), (18) and (20) of the IORP Directive are particularly pertinent here.</p>	
44.	<p>I agree with the analysis regarding the submission of recovery plans and the length of recovery periods as introduced by Articles 138 and 139 of Solvency II. Recovery periods with regards to the SCR and the MCR should be flexible, taking into account the nature and characteristics of the IORP.</p> <p>The main reasons to allow IORPs longer recovery periods than prescribed by Solvency II are:</p> <ol style="list-style-type: none"> <li>1) the nature of IORPs and the characteristics of the institution and the national system they operate in. In many cases the IORP is sponsored by the employer, and we should consider the financial condition of the IORP and sponsor holistically. If the sponsor can only viably fund a longer-term recovery plan, this should be acceptable, as long as the plan is reasonable. It is not a good idea to unreasonably force a sponsoring employer into insolvency.</li> <li>2) The liabilities of IORPs are long term in nature, with less volatile outgoings compared with insurance companies.</li> </ol>	
45.	<p>Yes, the IORP Directive should be extended with stipulations introduced by Articles 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. This is clearly prudentially appropriate in order to protect members and beneficiaries of IORPs in these situations.</p>	
46.	<p>I agree that the IORP Directive should specify what constitutes a recovery plan as introduced by Article 142 of Solvency II. The contents of the recovery plan should consider the nature and characteristics of IORPs, and should include all economic items and income and outgoings, including</p>	

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	<p>sponsor support, risk mitigation measures and security mechanisms. However, in general I would caution against including pension protection schemes in such a recovery plan, as these are normally triggered only after exhausting all other forms of support. See also my response to question 41.</p>	
47.	<p>Ideally, the prudent person principle should be a sufficient basis for the investment of IORPs. This is a generally accepted and understood principle, and is enshrined in the Solvency II Directive.</p> <p>In reality this principle has to take into account the wide-ranging characteristics of IORPs and pension arrangements, and their interaction with different Member State's SLL, and so some additional provision may be needed. But this should only be used where absolutely necessary.</p>	
48.	<p>This depends on the nature and consistency of the valuations of assets and liabilities, and the solvency regime. If a Solvency II-like, market-consistent approach to the calculation of technical provisions along with a consistent, robust risk-based capital regime were introduced, then there should be little need for Member States to have the option to impose limitations on investments in addition to those set out in the IORP Directive.</p>	
49.	<p>I broadly agree with the analysis regarding investment provisions for defined contribution (DC) schemes. However, there may be a need for a proportionate approach here. For example, if a DC scheme only offers one default fund option, we could require that it should comply with some quantitative investment limits in order to protect members from an inappropriate investment strategy. I agree with Paragraph 11.3.63 regarding the "safe harbour" option here. If a DC scheme offers more than one fund option, then it should be allowed more investment freedom, including the freedom to offer a more risky option, and / or a safer option.</p> <p>Paragraph 11.3.66 raises the possibility for a compulsory default option subject to certain principles. This is an interesting idea. However, if the principles were too narrow, it could lead to a mass herd effect, with a large number of funds following similar (prescribed) investment strategies. Please note that this could have adverse consequences, and it could be open to external manipulation or abuse.</p>	
50.	<p>I broadly agree with the analysis of the options (including the pros and cons) as laid out in the advice.</p>	

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51.	I support the current prohibition on borrowing in Article 18(2) of the IORP Directive. I accept that excessive borrowing would be measured, monitored and limited under a realistic, market-consistent valuation and solvency framework; but I agree with Paragraph 11.3.88 that this prohibition would offer additional, reasonable and timely protection for members and beneficiaries in certain circumstances.	
52.	I agree with the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour.  I accept that there are potential issues with procyclicality that may require some form of regulatory response in order to limit their adverse impacts. However I do not support the concept of an equity dampener, either for insurance companies or for IORPs. Its methodology, use and calibration (see under QIS5 as an example) is far too subjective, arbitrary and intransparent and does not promote confidence in the solvency framework.	
53.	I agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability should also apply to IORPs. This would promote supervisory and regulatory convergence and make explicit the commitment to improve transparency and accountability in the IORP sector.	
54.	Yes, I agree that EIOPA has correctly identified the main issues. Given the small size of many IORPs, I would recommend that we should apply a proportionate approach here.	
55.	I believe that it is reasonable that Supervisory authorities should have broadly the same powers to require IORPs to conduct stress tests as they have in respect of insurers. Such powers should be applied reasonably and should be exercised proportionately.	
56.	Yes. I agree with reinforcing the sanctioning regime for IORPs. An effective sanctioning regime should be proportionate and dissuasive.  (As an aside, I would like to see more encouragement and protection for whistleblowers alongside an effective sanctioning regime.)	

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57.	Although I accept the argument in Paragraph 15.3.11, I would also recommend that sanctions imposed should normally include a public reprimand and / or be published. This is because there are still choices to be made by members and beneficiaries, for example whether to join or stay in the IORP, possibly voting on IORP or management issues and staffing etc. Greater accountability, transparency and disclosure of imposed sanctions may help members and beneficiaries make more informed decisions in such cases.	
58.	In general I concur with the analysis and conclusions regarding the competence of host member states to take measures.	
59.	I agree that the requirements for the supervisory review process for insurers should also apply to IORPs. This is consistent with Solvency II, and would lead to more consistency in supervisory standards between IORPs and insurance companies.	
60.	I would also be in favour of applying the requirements for capital add-ons for insurers to IORPs. This is consistent with Solvency II, and would lead to more consistency in supervisory standards between IORPs and insurance companies. These requirements should however take into account the nature and characteristics of IORPs, and the holistic balance sheet proposal.	
61.	<p>I agree that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs. This would promote supervisory consistency between IORP and service provider, and between own and outsourced functions, and therefore remove any gaps in supervision here.</p> <p>I agree that when the service provider is located in a non-EEA country, it is the responsibility of the IORP to ensure the relevant access of the Supervisory authority. This would require a reasonable transition in order to allow IORPs enough time to make any necessary contractual changes.</p>	
62.	<p>The home state should be the state where the IORP has been authorised or registered. This is transparent and objective.</p> <p>I agree with the proposed rules on chain outsourcing. This should ensure internal supervisory consistency (please also see my response to question 61).</p>	

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63.	<p>I agree with the principle that the material elements of the Solvency II requirements for governance should apply to IORPs. I agree that the principle of proportionality needs to apply here in order not to unduly burden small and less complex IORPs.</p> <p>I do not agree with Paragraph 18.3.23. I believe that there are quite major differences between defined benefit and defined contribution schemes in terms of risks, funding and sponsorship. There are also differences in governance requirements, for example the requirement, roles and duties for any scheme actuary.</p>	
64.	<p>Partly. One of the main differences between insurers and IORPs is their role and purpose. Insurers compete for profits, or to generate surpluses for their owners; some IORPs also do this, but many are tied with employment, and the employer, and are a form of deferred pay. Another key difference is in the heterogeneity of IORPs, which is discussed in Paragraph 18.3.5. In consequence, I believe that this generally demands a broader application of the proportionality principle.</p>	
65.	<p>I agree with 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. Introducing such fit and proper requirements for IORPs is overwhelmingly positive: it should improve security for members and beneficiaries and promote confidence in pension provision more generally. I do not believe that this would be burdensome or costly to implement. Either persons who have key functions are fit and proper, which is good, or they are not, in which case they should be retrained or replaced.</p> <p>Re: Paragraph 19.3.16, I would suggest limiting the key functions to those included in the system of governance.</p>	
66.	<p>I agree that the fit and proper requirements should apply at all times. This is basic good governance and risk management and is prudentially appropriate. I also agree that there should be effective (including cost-effective) procedures and controls to enable Supervisory authorities to assess fitness and propriety.</p>	
67.	<p>The fit and proper requirements are a basic duty of care. Supervisors should have broad powers to</p>	



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	take any action, in order to protect an IORP or its members and beneficiaries, in the event that the fit and proper requirements are not fulfilled.	
68.	<p>I strongly support the proposed principles of the revised IORP directive. The introduction and maintenance of robust and efficient risk management practices in IORPs will improve security of pension provision for members and beneficiaries. It will promote confidence in pension provision more generally, and therefore help to manage expectations concerning the security and sustainability of pension provision in Europe. The proposed principles are also generally internally consistent with Solvency II and the holistic balance sheet approach.</p> <p>I would only caution that, given the heterogeneity of IORPs, and their varying nature, scale and complexity, this will require a broad application of the proportionality principle.</p>	
69.	<p>I agree that ORSA is, in principle, suitable for IORPs. In particular, ORSA should also consider:</p> <ul style="list-style-type: none"> <li>- discretionary benefits, and communications and expectations thereon;</li> <li>- the holistic balance sheet, especially expectations of sponsor support.</li> </ul> <p>Such an assessment would be useful in order to better manage the expectations of members and beneficiaries, the IORP, its sponsor and also supervisors in these regards. ORSA is also more consistent with Solvency II methodology.</p> <p>I would recommend a broad application of the proportionality principle regarding the ORSA, which should be consistent with risk management (please see my response to question 68).</p>	
70.	The scope of ORSA for IORPs where members bear all the risks should be quite limited. However it could cover the assessment of operational risk impacts as well as information on the objectives of the IORP and the strategic and market developments affecting the IORP.	
71.	It may still be useful to perform ORSA in conjunction with the holistic balance sheet approach in order to better manage the expectations of all the key actors regarding the potential amounts, timing and uncertainty of payments and funding, especially regarding discretionary benefits and sponsor support (please also see my response to question 69).	

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72.	<p>I agree with the analysis regarding the internal control system.</p> <p>Regarding the compliance function, its specific duties should include, but not be limited to:</p> <ul style="list-style-type: none"> <li>- reviewing and reporting to the board on the IORP's compliance with relevant regulations, rules and principles (covered under Article (2) of the Solvency II Directive);</li> <li>- establishing procedures for the remediation of noncompliance issues;</li> <li>- identifying and reporting to the board any conflicts of interest that may arise;</li> <li>- establishing procedures for the resolution of such conflicts of interest.</li> </ul> <p>Please note that the last three points above are broadly covered in the Solvency II Directive, but bringing their responsibility within the compliance function will help to formalise governance and reporting thereon.</p> <p>It is important that job descriptions, rules, structures and procedures act to secure and maintain the compliance function's independence. For example the compliance function should have a single compliance role and no other competing role or responsibility that could create conflicts of interest or threaten its independence. Furthermore the remuneration of the compliance function should be specifically designed in such a way that avoids potential conflicts of interest with its compliance role.</p> <p>I strongly agree with the proposed new explanatory text on the whistle-blowing obligation of the compliance function. This should include safeguards and protections for whistleblowers. This would act to reinforce the integrity of the internal control system and should encourage entities to take preventative as well as corrective action.</p>	
73.	<p>I support the new explanatory text on scope; clearly the compliance function should include all legislation with an impact on the operations of an IORP. This is more complete.</p>	
74.	<p>I agree that the material requirements of internal audit in respect of insurers should also apply to IORPs, subject to proportionality and other changes. My comments on question 72 above on avoiding conflicts of interest and maintaining independence are relevant here.</p>	

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75.	I strongly support the proposed whistle-blowing obligation of the internal audit function. This should include safeguards and protections for whistleblowers. This would act to reinforce the integrity of the internal control system and should encourage entities to take preventative as well as corrective action.	
76.	The proposed role and duties of the actuarial function are broadly okay. The actuarial function should also provide commentary on: the funding objectives; the scheme of contributions required in the future to maintain solvency and / or to make good any deficit (shortfall) in funding; the risk that the sponsor may not be able to continue to pay contributions or make good any deficit in the future; and the scope (and / or costing) for paying any discretionary benefits. Please note that the role and duties of the actuarial function could be broader if a Solvency II-like, market-consistent approach to valuation and solvency was not adopted (for example there may need to be commentary on the consistency of the valuation of assets and liabilities, the level of prudence of the valuation and risks thereunder, solvency expectations, the change in funding and contribution scheme to changes in key assumptions including investment returns and asset values etc).	
77.	I agree that the requirements of Solvency II are a good starting point for the actuarial function.	
78.	<p>Yes, I strongly agree with the importance of independence of the actuarial function. The actuarial function should act in a detached manner and be free of pressures, conflicts of interest or encumbrances that could (unreasonably) limit and / or modify its work and / or advice. For example, the actuarial function holder should not have any significant direct or indirect interest in the IORP, or affiliated / connected entities, including the sponsor. It would be preferable if the actuarial function had no other competing role or responsibility that could create conflicts of interest or threaten its independence. Furthermore the remuneration of the actuarial function should be specifically designed in such a way that avoids potential conflicts of interest with its role.</p> <p>The advice in Paragraph 24.5.10 states that: "Member States should have nevertheless the option to permit that the actuarial function is carried out by a member of the staff or the administrative, management or supervisory body of the IORP". I would advise that the actuarial function should not be carried out by a key "decision-maker", as this may lead to irreconcilable conflicts of interest; for</p>	

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	example between the actuarial advice on funding and contributions or benefits, and the interest of the decision-makers, which could include members and / or the sponsor.	
79.	I broadly agree with the analysis of the options as laid out in the advice. Given the heterogeneity of IORPs, and their varying nature, scale and complexity, this will require a reasonable application of the proportionality principle.	
80.	I agree that the material requirements on insurers in respect of outsourcing should also apply to IORPs. This is prudentially reasonable and appropriate and would improve consistency between IORPs and insurers.  Several paragraphs refer to responsibility including Paragraphs 17.3.3, 18.3.16, 19.3.4, and particularly 22.3.4, 23.3.3 and 25.2.3. It is a general principle that no matter how much decision-making or functionality is outsourced, overall responsibility remains firmly with the IORP. Therefore I strongly agree with Paragraph 25.3.2 that this principle should be explicitly prescribed in the revised IORP Directive.	
81.	I generally agree with the standardisation of outsourcing process; however I am not convinced that this would meaningfully enlarge cross-border (IORP) activity. See also my response to question 5.	
82.	I would not support detailed minimum outsourcing contract elements here. However, the following broad principles need to be considered: <ul style="list-style-type: none"> <li>- outsourcing should ideally improve operational efficiency in IORPs;</li> <li>- it should not increase operational risk;</li> <li>- it should not hinder effective supervision by Supervisory authorities.</li> </ul>	
83.	In general I agree with the proposed treatment of depositaries.  It is necessary to clarify when the depositary is liable for losses referred to in Paragraphs 26.3.32 and 26.5.16. For example, Paragraph 26.3.32 states that:  "the depositary should be liable to IORPs and pension scheme members and beneficiaries for any loss suffered as a result of its unjustifiable failure to perform	

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	<p align="center">its obligations or its improper performance of them”.</p> <p>I would therefore recommend that Level 2 and Level 3 guidance regarding safe-keeping, oversight and administration should be introduced in order to clarify the duties (including duty of care) of the depositary. For example the depositary may not be liable for a loss if it could show that it could not reasonably have avoided the loss. This may be particularly pertinent in the case of country risk or political risk.</p>	
84.		
85.		
86.	<p>Regarding point (a) the need for a written contract; I agree with Paragraph 26.3.30 that “the appointment of depositaries should be formalised in a written contract regulating at least the flow of information necessary to enable the depositary to perform its function. Furthermore, the elements of the contract should be detailed in level 2 text”.</p> <p>Regarding point (e) conflicts of interest; a requirement for functional and hierarchical segregation of functions would be reasonable and appropriate.</p>	
87.	<p>The list of minimum oversight functions that should be performed by a depositary is appropriate. We should, however, be careful that these oversight functions are not extended into areas which are more properly the duty of the IORP.</p>	
88.		
89.	<p>I strongly agree with the analysis of the options (including the pros and cons) as laid out in the advice. I particularly agree with the advice in Paragraph 26.5 which states that:</p> <p align="center">“there are concerns that any large scale new requirements would not necessarily increase member protection and will significantly increase costs borne by the member”.</p> <p>This should be borne in mind going forward.</p>	

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90.	I would support convergence of provision of information to supervisors in certain harmonised fields, for example, concerning a new Solvency II-like, market-consistent approach to valuation and solvency. I do not consider that complete convergence is feasible or even desirable here, as it may lead to a "lowest common denominator" type outcome.	
91.	<p>The current information requirements are a good starting point. Basic information on benefits, contributions, rights and obligations, risks, funding, investment policy and its link to benefits and funding etc, should be provided prior to joining (pre-enrolment) for all IORPs, and should be provided at the earliest opportunity for mandatory IORPs.</p> <p>I agree that more information, in line with the proposals for a KID should be provided for DC schemes.</p> <p>Ongoing information also needs to be provided, at least annually. I agree with the analysis regarding ongoing information disclosures for DC and DB schemes.</p>	
92.	<p>I support the introduction of a KID that would contain information beyond investment.</p> <p>I fear that there is quite a lot of information to be disclosed here, which may not easily fit into 2 pages as suggested in Paragraph 29.2.32.</p>	
93.	<p>Concerning investment options and their different risk/reward profiles, a balance needs to be struck between risk and reward. Within risk, the key risks should be disclosed first.</p> <p>I would not support that the risk ranking should vary with time horizons, allowing for a more favourable ranking of equity-oriented investment options for long horizons. This is very dangerous, and may create false expectations concerning the relative performance of different investment options. Given that IORPs usually invest to a particular point in time (retirement), rather than open-ended, the actual risk of investing in equities is quite high. We must also be careful not to give the wrong signals concerning investments, or else any potential investor would simply pick the "best looking" option.</p> <p>I would recommend that at least three performance scenarios should be disclosed: Unfavourable, medium (or most likely or best estimate) and favourable. I would recommend one of two options to</p>	

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	<p>allow for the different asset allocations:</p> <ul style="list-style-type: none"> <li>- 1) the three scenarios could be chosen from a stochastic set, which would allow explicitly for the expected risk and return profiles of the different assets in its parameter settings and calibration. E.g. 1000 such scenarios could be created, and the mean (middle) scenario could be disclosed along with the 25<sup>th</sup> and 975<sup>th</sup> best scenarios after ranking. I accept that this is probably too complicated for most IORPs to implement.</li> <li>- 2) The three scenarios could be run deterministically. A risk premium could be included for equity-oriented investment options within the three deterministic scenarios, but also a wider spread of outcomes, which would thus explicitly illustrate the greater expected range of returns for equity-oriented investment options. This could then fairly show the greater risk and reward profile for equity-oriented investment options.</li> </ul> <p>After considering the proportionality principle, I would suggest option 2 above. At least this would fairly and reasonably manage expectations concerning the relative risk/reward profiles for different investment options, which is probably the key issue here.</p>	
94.	<p>It is important that all costs are transparently disclosed for DC schemes. The effect of costs can be illustrated in a harmonised way by disclosing the expected "reduction in yield" after allowing for all costs.</p> <p>For more information on the benefits of regulation in this area, including on the effect of charges and the reduction in yield, please refer to: <a href="http://www.fsa.gov.uk/pubs/other/cra_report_benefits.pdf">http://www.fsa.gov.uk/pubs/other/cra_report_benefits.pdf</a></p>	
95.	<p>I would suggest that a minimum level of harmonisation can be achieved above and beyond that contained in the IORP Directive.</p>	
96.	<p>I broadly agree with the impact assessment of the proposals.</p>	