Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation		Deadline 02.01.2012 18:00 CET
Company name:	**European Fund and Asset Management Association (EFAMA)**	
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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

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Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation		Deadline 02.01.2012 18:00 CET
Question		
General comment	**EFAMA** is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 56 corporate members approximately EUR 13 trillion in assets under management of which EUR 7.7 trillion was managed by approximately 54,000 funds at end September 2011. Just above 36,200 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds. **Reasons for reviewing the IORP Directive**: the European Commission gave three main objectives for reviewing the IORP Directive: • simplifying the setting-up of cross-border pension schemes; • securing modernisation of prudential regulation for IORPs which operate DC schemes; and • allowing IORPs to benefit from risk-mitigation mechanisms. We would like to emphasize the importance of ensuring a proper balance between these three objectives. We fear that the subsidiarity principle according to which pensions and pension systems are the responsibilities of Member States will result in limited progress toward the achievement of the firstobjective. This would not be suitable. As Commissioner Barnier has recently emphasized, there are still very few cross-border pension funds in Europe. It is therefore important to revise the Directive to enable employers and employees to reap the full benefits of the single market. We are also concerned by the fact that there are considerable trade-offs between the three objectives. In particular, while the implementation of some of the proposed new regulatory measures might increase of the level of security offered by IORPs, many of these measures will increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity. It would also be incongruous that the IORP Directive review would ultimately lead to a reduction in	

the number of employees being covered by DB schemes, whereas one of the most important challenges facing Europe today is the low level of penetration of occupational pension schemes and the looming decline in replacement rates from public pensions. Thus, it is vital to find the right balance between the objectives of wanting a high level of a high security level for all occupational schemes and of improving citizens' access to complementary occupational and private pensions.

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

Risk-based supervision for IORPs: we fully support the European Commission's view that all IORPs should benefit from the risk-mitigating security mechanisms at their disposal. And we also support Commissioner Barnier's goal to contribute to the creation of "*a modern and innovative system founded on risk-management, corporate governance and effective supervision" (see speech dated 16 November in Francfurt).*

In our view, the main goal of any revision of the solvency regime for IORPs in that direction would be to ensure the protection of pension scheme members and beneficiaries. This is not to guarantee that the level of security offered by all IORPs across Member States is the same, for the simple reason that Member States have different views on the relative merits of capital requirement and other mechanisms such as the level of commitment from the sponsor and pension protection schemes. In other words, we understand the desire of the European Commission that the level of security offered by all IORPs be similar across Europe. However, we believe that there can be differing ways to achieved the desired level of security.

From this perspective, it is essential to focus on the security of the pension promise made to the members and beneficiaries, which may include, for instance, ex-ante or ex-post reduction of benefits in adverse scenarios.

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

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

Differences between IORPs and insurers: we recognize that EIOPA stressed that there are important differences between IORPs and insurers, and tried to reflect those differences in its analysis. In our view, the most important differences are:

- The ability of sponsor backed IORPs to rely on the sponsor
- The conditionality of pension rights
- The duration of pension portfolios
- IORPs are not profit making organisations and their mission is to provide secure and sustainable pensions to their members.

- IORPs are in general much smaller than insurance companies

Security mechanisms: as a general comment, it is not clear that the concepts discussed in Chapter 10 can easily be transferred into the multiple regimes of pensions and the additional costs are likely to impact the returns that a pensioner can expect from the pension scheme. We believe that shortening recovery plans would place increased pressure on corporate sponsors and discourage the provision of work place pensions. We also believe that the application of operational risk capital have the consequence of reducing the value of savings over time with little extra benefit.

Quantitative Impact Study: it is not possible to support the proposed new regulatory framework for IORPs without knowing what would be the likely quantitative impact of the new regime, in particular regarding the additional costs and administrative burden. We believe it would be useful to integrate the following considerations in the preparation of the QIS.

- **Security**: we support the importance given by EIOPA to the protection of pension scheme members and beneficiaries. This means that the increased level of security that should follow from the proposed strengthening of the prudential regime for IORPs should be measured appropriately in the QIS. This will require using a robust and developed methodology to assess the intrinsic contribution of the proposed measures to the overall objective of higher security. The methodology to be developed should in particular addresses the following questions:

    - <u>What is the positive impact that should be given to higher security in Member States where IORPs are already offering an undisputed high level of security?</u> In considering this question, EIOPA should recognize that when a certain level of security is reached, the benefits of additional measures in terms of higher security will be lower than the costs for the IORPs, sponsoring undertakings and the pension scheme members.

    - <u>How will the overall measurement of the positive impact of new security measures take into account of the differentiated impact across Member States?</u> In considering this question, EIOPA should refrain recommending new harmonized measures if the expected benefits of these measures is driven by a supposedly insufficient level of security in a group of countries. In other words, the costs associated with the proposed approach to the calculcation of capital requirements should not be imposed to all IORPs in Europe to solve a security problem affecting only some Member States. The right way forward in addressing this problem is for EIOPA to recommend that the Member States concerned adopt measures to strengthen their occupational pension system.

- **Cost of reporting**: The additional requirements in terms of reporting will be onerous for many IORPs. The QIS will have to properly identify and calculate these cost elements.

- **Qualitative impact**: in order to be able to give a technical advice on a number of issues, EIOPA should take into account qualitative aspects. A key challenge in this context will be to attach a value to these qualitative issues. In the discussion regarding the solvency framework of IORPs, this would require among other things to value the sponsor's support and benefit adjustment mechanism.

- **Macroeconomic and financial impact**: It is clear that Solvency II is in favor of bonds but not in favor of equities despite the fact that this is an asset class which is needed to diversify and which is long term because it has an endless duration. This has already led to an overall reduction to insurance company asset allocation to equities, and other asset classes like real estate, and we fear that as the regulations come into force this trend could be accelerated. Applying Solvency II style regulation more broadly would weigh heavily on these asset classes and make it more difficult for companies to raise equity, thereby constraining the long-term financing companies and the growth potential of the European economy. It could also deny pension investors from investing in inflation hedging assets that are suited to matching long duration liabilities. For these reasons, the relative risk asset charges embedded in the Solvency II standard formulae are considered by many pension funds to be counterintuitive and likely to discourage them from holding non-government risky assets, including long-term credit, structured credit, equities and alternatives. Consequently, pension funds may sell a significant proportion of these assets over a relatively short period of time around the implementation date of Solvency II. Furthermore, for the market it would be very negative

	when all investors with long liabilities have to invest under the same rules, if even their structure is very different. This would lead to a very similar behavior of all market participants which would increase volatility and contribute to systemic risk. In this respect, we strongly agree with the view that IORPs can serve as a stabilizer for markets if they are not regulated in a way that causes pro-cyclical effects. The QIS should therefore take into account the negative macroeconomic and financial impacts, in particular regarding market volatility and pro-cyclical effects. **Conceptual approach to solvency rules**: EFAMA believes that the Solvency II framework for IORPs should take into account a least the following aspects of the occupational pension market: • The various specificities of the vehicles in question. Each vehicle has different funding requirements and could operate in its own capacity, through an IORP subsidiary or through providers (i.e. a bank, asset management entity, an issuer etc.). • The specificities of the products run and offered through the vehicle and whether it is a pure DC scheme. If a scheme does not contain any guarantee and/or biometric risk coverage, the market and longevity risks are borne by the member. • The specificities of the risks involved. Traditionally, only financial risks have been taken into account. However, other factors could be considered. EIOPA has identified eight different types of risks in a recent study. • Who bears that risk, whether it is the employer, the employee or the vehicle itself? If it is the vehicle, capital should be required. • The specific role of the pension vehicle and whether it is to play an essential role in pension provision or to offer an additional source of retirement income.	
1.	In general EFAMA agrees with the analysis of the options.	

2.	A proposal to change the **scope of the Directive** should also include a discussion of an amendment of Article 4 to extend the optional application of the Directive to other regulated financial institutions. To the extent that there are financial institutions other than life assurance companies that offer occupational pension services, it is important to extend the optional application of the Directive to these institutions to ensure that the Directive does not lead to distortions of competition. The prevention of asset managers and other institutions such as banks from competing with pension funds and life-assurance companies on equal terms has led indeed to pension markets being dominated by a limited number of providers belonging to the latter categories. EIOPA should also address the fact that providers may be covered by another Directive, while being very active in the pension market. For instance, in France asset managers manage the funds of the Perco, and investment services companies and banks administrate the employees accounts. In these situations, it is unclear what rules should apply when a provider is covered by another directive and when this directive is not compatible with the IORP Directive.	
3.	EFAMA supports option 2, but recommends to amend its formulation to a partial application of the IORP Directive to "all types of occupational pension schemes". This will create a European standard for IORPs and leave an option for member states to implement the IORP Directive when the time is right. Trying to include funded scheme partially connected to the public social security regimes can have an adverse impact, because these realities are so different, that does not seem possible to harmonize their philosophy into a unique supervising model. With reference to the concern about the participants' protection, these funded schemes can have security mechanisms provided by the each Member State.	
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5.	We agree EIOPA proposal that Option 2 is preferable. However, there is a danger with option 2 that IORPS become cross-border schemes accidently where the parent company of the sponsoring undertaking is in a different country to the IORP and the members. This could mean that schemes end up being cross-border even where all the members and the IORP are in a single place. The	

	funding requirements and registration requirements of cross border schemes would then kick in, this will have significant impact on DB schemes which are not fully funded. This should be avoided.	
6.	There are many ways of **ring fencing** assets, depending on the design of the scheme. For instance, in a DC scheme, each employee account is a ring fenced system if there is only retirement savings on this account. In this case, there is no need for extra ring fencing. More constraints would create extra cost and would be unnecessary. What should be avoided are attempts to create additional hurdles to cross-border IORPs. More generally, the concept of ring fencing, as EIOPA notes, is complicated and care needs to be taken that the impact of any directive does not create any uncertainty regarding the ability of IORPs to enter into standard market transactions, which could be overturned if creditor priorities were altered.	
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9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts. Assets are employees property. There are no other creditors on these assets so there is no need to protect the assets in case of IORP liquidation.	
10.	The interpretation of what qualifies as **social and labour law** differs from one Member State to another. This situation creates additional hurdles to cross-border IORPs. It would therefore be useful to achieve a common understanding of what social and labour law should encompass. As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions. We would therefore have welcomed a greater focus on how to address this issue.	
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12.	The paper details a suggested approach to address concerns raised regarding significant differences	

on how pensions are structured relative to insurance companies and thus the inappropriateness of applying a straight Solvency II quantitative approach. In this respect, the "**holistic balance sheet**" does appear to attempt to address these concerns. However, we believe that the requirement to provide additional capital and risk buffers will increase the costs of providing pensions which will operate to reduce the attractiveness of providing workplace savings schemes and potentially reduce benefits for pension savers. It is not clear that employees or DC plan participants would be able to understand the need for these additional buffers.

We are also concerned that the implementation of the approach will take a lot of additional practical efforts that particularly the smaller plans will be unable to implement and will be disproportionate effected. The implementation will be extremely complicated, as there are numerous questions to address, such as

- In the case of sponsor backed IORPs, how will EIOPA take into account the risk that the sponsor is unable to provide the assets required to restore funding after a shock?

- When IORPs are permitted to reduce benefits based on a contract concluded beforehand, how will EIOPA model this form of soft promise being made by the IORP or sponsor?

- How will EIOPA incorporate this type of mechanism when the adjustment of benefits is left to the negotiation between the social partners that takes place ex-post?

One of the most difficult challenges will be to take into account the governance arrangements of IORPs, which often reflect a "social contract" between the main stakeholders (i.e. members, beneficiaries, employers) which allows for some sort of risk sharing between the stakeholders. This kind of mechanism differentiates very much occupational pension schemes from life insurance plans, which typically don't allow for ex-post solidarity mechanism.

From this perspective, we consider that the distinction between the "IORP Directive" approach (option 1 on page 73) and the "holistic balance sheet" approach (option 2 on page 73) may be a bit

	artificial. It is indeed vital to retain the main benefits of option 1, i.e. allowing for proper recognition of the individual mechanisms that provide security to the IORP and ensuring that each form of IORP is individually recognized in a clear way. The logical implication of this widely accepted constraint is that a full harmonized approach across all types of IORPs does not appear possible and is not desirable given the diversity of IORPs between Member States. Thus, while we understand the motivation behind the "holistic balance sheet" approach, we are not sure to understand how it would differ in practice from the "IORP Directive" approach as significant flexibility would be needed in the provision and in the implementation across Member States to allow for all kinds of IORPs. Against this background, we believe that the holitic balance sheet will be considered a viable alternative to the existing IORP Directive. Regarding specifically the distinction between Article 17(1) IORPs, Article 17(3) IORPs and sponsor-backed IORPs, we consider that this distinction should be retained because the recourse to sponsor support as well as the existence of other security mechanisms should be considered explicitly.	
13.		
14.	We believe that the **valuation** basis is an area that is best commented on by actuaries and auditors, but recognise that the way liabilities are valued will have a direct impact on the approach for investing assets. We believe that if inappropriately applied, the impact could be to encourage more short termism at the expense of growing long term value. We would suggest that transparency and clarity are key criteria and that applying one standard to multiple types of IORP may not be feasible nor desirable. We also would like to stress that the nature of the IORP cannot be compared to the insurance activity as far as liabilities valuation and technical provisions are concerned. Article 75(1)(b) of the Directive 2009/138/EC, establishes that: "liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction." The concept of transfer value should not be applicable for IORPs, which have to be managed on an on-going basis not on a liquidation basis. The situation is different for insurance companies which	

	have to provide other type of guarantees, as their main activity is risk acceptance; their business is to profit from the price of the risk. As they operate in an open market and sell life-saving products, the consumer need to have protection.	
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21.	We tend to agree with EIOPA that the **use of a risk free interest rate** and, connected with this, the transfer of all quantitative requirements of Solvency II to IORPs (option 2), would have several negative effects, i.e. • a material rise in technical provisions in many Member States and therefore higher up-front financing costs for IORPs; • high volatility of results when calculating technical provisions and capital requirements due to changes in the risk free interest rate. This problem is likely to penalize many IORPs because they provide far more and longer lasting guarantees than life insurance companies do on average; • pro-cyclicality effects; • problems for IORPs to comply with quantitative requirements; • reluctance of employers to further provide occupational pension to their employees because of higher up-front costs.	

	From this perspective, we consider it would be worth exploring further option 3 (approach with two discount rates/levels of technical provisions), as this approach would allow taking into account the specificities of IORPs in different Member States and easing pro-cyclical effects. There does not seem to have any negative effects, especially if Level B technical provisions were harmonized across all Member States.	
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36.	The goal of achieving a ***uniform* security level** for IORPs across Europe appears very ambitious for reasons that are highlighted by EIOPA. Indeed, existing national Social and Labour Law allows for different levels of security, given the existence of ex-post benefit adjustment mechanisms and on-going legal obligations of sponsors to provide the full level of benefits. To the extent that these mechanisms reflect the "social contract" between the main stakeholders (i.e. members, beneficiaries, employers), Member States should retain full responsibility for the decision on the role of these mechanisms, in accordance with the principle of subsidiarity. The following conclusions can be derived from these remarks:	

	• The review of the IORP Directive should not aim at harmonizing the level of security of Member States' pension systems, through the implementation of identical rules regarding the time horizon, the confidence level and the frequency of the calculation of solvency capital requirement. Indeed, imposing identical rules would represent an attempt to enforce a single definition of the "pension promise" across Europe, i.e. excluding the possibility of ex-post and ex-ante benefit adjustment mechanisms. • The assessment of the confidence level that would be applied to IORPs should take into account other security measures, especially last resort measures to reduce benefits. To the extent that these cannot be taken into account adequately in the holistic balance sheet, a lower confidence level would be requiredto take into account these benefit adjustment mechanisms. Such elements should be related to the longer term horizon that IORPs typically have to implement policies and adjust their balance sheet. • Aiming at achieving a high level of harmonization of technical provisions across Europe does not appear consistent with the necessity to take into account in an explicit way the benefit adjustment mechanisms.	
37.		
38.	EFAMA is not in a position to take a firm position on applying the Solvency-II rules for calculating the **solvency capital requirement** (SCR) for IORPs, without knowing the complete results of the quantitative impact assessment analysis. However we fear very much that the 99.5% confidence level will imply a substantial need on additional capital.	
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40.	EFAMA believes that a uniformed **minimum capital requirement** (MCR) does not appear possible and is not desirable given the diversity of IORPs and the profound differences in the security mechanisms used across Europe to ensure the security of the pension promise made to pension schemes members.	

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42.	We don't understand why losses due to **operational risk** events would be relevant only in situations were members or beneficiaries bear the investment risk. In fact, it could be argued that operational risk is higher in other kind of schemes (such as schemes offering guarantees/other benefits). It is also unclear why the operational losses would necessarily be borned by the IORP itself or the sponsoring undertaking managing the schemes in situations where members don't bear the investment risk. We therefore don't consider it sensible to distinguish between DC and other schemes in the area of operational risk. When the IORP has outsourced functions, we strongly believe that the need for capital requirements against operational risk would have to take into account the capital requirements already imposed, for instance, on external asset managers through UCITS IV, MiFID or AIMFD. Overall, if operational risk is already covered, there is no need for additional capital requirement.	
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47.	EFAMA believes that the review should not lead to giving more powers to Member States to impose detailed rules. The review of the Directive should be taken as an opportunity to strengthen the application of the **prudent person principle** across Europe to ensure greater harmonization in investment rules among Member States. It is clear that any restrictions that are applied by individual Member States restrict the ability of offering or creating pan-European retirement plans. We also feel that legislating or restricting the ability to design appropriate investment options for DC schemes could operate to stifle innovation and restrict member choice. If EIOPA decides nevertheless to propose to retain the option of restrictions "to protect members who	

	bear the investment risk" (option 3 from page 271), we strongly believe that the Directive should not allow that Member States to • prevent IORPs from investing in UCITS, as UCITS are consistent, highly regulated and recognized across Europe and in other parts of the world. As a long-term investment product, UCITS offer the required quality in terms of portfolio diversification, professional management, level of investor protection and transparency, and liquidity; • impose portfolio limits that inhibit adequate diversification or impede the use of asset-liability matching or other widely-accepted risk management techniques and methodologies. EIOPA should also require that the legal provisions setting forth quantitative portfolio limits be regularly assessed to determine whether they are unnecessarily inhibiting the ability of pension fund asset managers to implement optimum investment strategies and amended to the extent necessary.	
48.	In addition to our responses to Questions 47 and 51, we are of the view that host Member States should not be allowed to apply some investment rules to the IORP assets that correspond to the activities in the host Member State. This means that Article 18(7) should be deleted in order to create a level playing field among Member States and eliminate a barrier to cross-border business.	
49.	It is clear that investment rules and limits may be set at the level of individuals schemes, and especially specific investment options, by the IORP itself, consistently with its risk-appetite and the commitments it is willing to take with its members. We are not convinced however that there should be extra restrictions on investment rules for **DC schemes**, for the purpose of protecting the participants. The participants must be aware of the risk of the investment they are exposed to. This can be achieved by providing adequate information to participants and beneficiaries. Provision of targeted communications, financial advice and automated pension decision tools can further improve individuals' ability to make the appropriate decisions. If EIOPA would nevertheless consider that Member States should have the possibility of introducing quantitative restrictions for DC schemes, the possible limitations should be agreed at the EU level to make it easier for IORPs to operate cross-border. In other words, in relation to the options presented on page 271, we support option 2 as the first option, and option 4 as a second best.	

50.	**Regarding CfA 7.1 (risk assessments)**, in considering the analysis of the positive and negative impacts of the different options, EFAMA considers that there is no need to change the Directive (Option 1). Changing the Directive using Options 2 or 3 would add more confusion than clarity given the need to take into account the specificities of DC schemes, the differences in the way IORPs are insurance companies are managed and existing national requirements concerning the outsourcing of the investment function. **Regarding CfA 7.2 (two or more undertakings)**, EFAMA agrees with EIOPA that Option 1 is the best as there are adequate safeguards in place. **Regarding CfA 7.3 (more detailed investment rules)**, as explained above, we believe that option 2 would be the best approach, i.e. Article 18(5) first and second sub-paragraphs can be delete from the IORP Directive in order to create a level playing field for the investment rules in all Member States based on the prudent person principle only. As noted by EIOPA, this approach would also have the advantage of treating IORPs and insurance undertakings in an equal way. Finally, this option would have the advantage of simplifying the regulations on investment rules for it would also make other provisions in Article 18 of the IORP Directive redundant. We believe there should not be different treatment between DB and DC IORPs on investment rules. In general, we strongly believe that an investment framework that allows efficient portfolio diversification across all assets classes and collective investment vehicles, including UCITS, real estate funds, private equity funds and other alternative investment funds, serves best. Moreover, efficient portfolio solutions are available for managing risk, taking into account factors such as the age and retirement date of the individual and the expected amount of public pension. Regulations that strictly limit investment in certain asset classes may result in pension assets not being invested in the best interests of pension scheme members, implying portfolio holdings that are not risk-return optimized. This makes the case for an investment framework based on the prudent-person principle. If EIOPA would nevertheless recommend to leave Article 18(5) for DC schemes, we would support option 4 to progress towards a level playing field for the investment rules and make it easier for IORPs to operate cross border. Regarding more particularly minimum return guarantees, while these guarantees limit the shortfall	

risk for individuals that may result from financial market volatility, they also limit individuals's participation in the upside benefits. The cost in terms of forgone returns, and hence lower retirement wealth, can be particularly significant if the guarantee is used throughout most or all of the pension accumulation phase.

As explained above, if Article 18(5) is kept to cases when members bear the investment risk, Member States should not prevent IORPs from investing in UCITS and offering pension schemes investing in UCITS.

Regarding CfA 7.4 (foreign currencies), in line with our comments on the merits of strengthening the application of the prudent person principle, we consider that Members States should not be allowed to put limitations on foreign currency exposure. There is no need to distinguish between DB and DC IORPs. This approach would create a level playing field for the investment rules in all Member States based on the prudent person principle only.

Regarding CfA 7.5 (capital markets), EFAMA agrees with EIOPA that it is not necessary to retain Article 18(5)(c).

Regarding CfA 7.6 (rules on an individual basis), EFAMA understands the need that supervisors should have the power to make pre-emptive interventions on an individual basis. However, we believe that this requirement should not be addressed in Article 18. As noted by EIOPA, Article 14 of the Directive gives the competent authorities the power to take "any measures, where appropriate, those of an administrative or financial nature … to prevene or remedy any irregularities prejudicial to the interests of the members and beneficiaries". Thus imposing more stringent investment rules on an individual basis is covered by Article 14. That means that the special provision in Article 18(6) can be deleted.

Regarding CfA 7.7 (cross-border activities), as explained in response to Question 48, we consider that Article 18(7) should be deleted.

Regarding CfA 7.8.2 (multi-funds, default options, life-styling): we don't believe it would be possible to determine standards for default/lifestyle funds that accommodate expectations and standards that differ between Member States and that take account of differing first pillar provision.

	Regarding CfA 7.8.3 (value at risk), we agree with EIOPA's view that there is no prudential justification to introduce this approach at European level. **Regarding CfA 7.9 (biometric risk and inflation risk)**, we support EIOPA that there is no need for specific investment regulations over and above those stipulated in general. **Regarding CfA 7.10 (other requirements)**, we • consider that the introduction of a geographical criterion for diversification would unnecessarily limit the prudent person principle; • agree with EIOPA's general view that limitations on investment in the sponsor should exclude sponsor supports;	
51.	We don't have a strong view regarding the prohibition of borrowing.	
52.	EFAMA agrees with the analysis regarding the objective of supervision. The measures to avoid pro-cyclical behavior need further analysis regarding the market impact of Solvency II adaption over the different regulatory and saving product areas.	
53.	As a general comment on 53-60, we consider that there are aspects of the insurance supervision that EIOPA is proposing to transpose into the Directive are inappropriate We encourage EIOPA to start by looking at the nature of the different pension regimes across Europe and asking what regulatory oversight they might benefit from. In this respect, the OECD Principles of Occupational Pension regulation are a much better stating point.	
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59.	We agree that it is appropriate to have in place a supervisory process to check the compliance of IORPs with the regulations of the revised IORP Directive, to clarify what supervision is about. However, that supervisory review processes should be determined by member states so that they are appropriate and tailored to the types of IORP in existence within the state.	
60.	It is difficult to see what extraordinary circumstance would arise in DC schemes that would require capital add ons.	
61.	It is important to clearly define exceptions regarding proportionality in this area. Where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc should come from its primary supervisor, not the supervisor of the IORP, otherwise there is a danger of duplicate requirements, and the associated costs of this.	
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63.	We support the general need of transparency and **general governance requirements**. However, the number of schemes and difference in form make the task of creating a uniform approach potentially costly for the industry, and potentially harmful in terms of benefits for members and beneficiaries. For many schemes, the imposition of the proposed regime would not reflect the differences in business models and backgrounds, and create significant burdens and cost, especially where the IORP has no legal personality and responsibilities are borne by providers, such as asset managers or administrators. Also, we strongly disagree with the analysis in 18.3.23 that there are no major differences between defined benefits and defined contribution schemes, It is also clear that there are profound differences between DC and DB schemes, primarily stemming from the different nature of the benefits being provided. This justifies applying different governance requirements for DB and DC schemes. Thus, if the IORP Directive is to be brought closer to the Solvency II regime, it is crucial that the principle of proportionality is applied, in particular regarding own risk and solvency assessment, internal control, internal audit, actuarial function and outsourcing. EFAMA stresses the need for an impact study to assess the real impact of the new requirements.	

64.	EFAMA agrees that EIOPA has correctly identified the areas where there should be differences between insurers and IORPs on general government requirements.	
65.	EFAMA agrees that fit and proper requirements be introduced as proposed by EIOPA. However these need to be applied proportionally. The advice should require that those who run or have key functions to have professional qualification. We also believe the IORP Directive should remain as is in this respect so as not to impose a disproportionate burden. Furthermore the test should be applied across the whole group of persons who effectively run the IORP without requesting the same level of qualification and experience from each person.	
66.	EFAMA agrees that fit and proper requirements be introduced as proposed by EIOPA.	
67.	Different Member States have already sanction systems in place for similar activities/breaches. General guidelines from EIOPA should be sufficient.	
68.	EFAMA considers that IORPs should have adequate **risk management** mechanisms in place with the understanding that their scope and complexity may vary according to the type and size of pension plan, fund and entity and the type and extent of risks faced. We agree it must be the responsibility of each IORP to define and implement a consistent and adequate solution for carrying out the risk management requirement. Also, the risk management function and systems should be implemented in a reasonable and proportionate manner depending on the nature, scale and complexity of the IORPs activities.	
69.	We do not think an Own Risk and Solvency Assessment (ORSA) is suitable for second pillar pensions as there is an employer sponsor.	
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73.	Compliance responsibilities need to be proportional to the size/type of IORP. If the requirements are disproportionate there is a danger that the costs become prohibitive and impact the level of support that a sponsor provides for a scheme.	
74.	As per 73.	
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80.	The Directive currently provides that Member States may permit to **<u>outsource</u>** to third party service providers the whole or part of IORP management. As far as we know, the established practices are consistent with the objective of protecting members and beneficiaries. In general, these practices reflect the specific characteristics of the occupational pension market at the national level, and are therefore not necessarily conform to the material aspects of Solvency II requirements on outsourcing. To the extent that these practices have a strong track record in terms of scheme protection and cost-efficiency, we would not understand why the Directive should be amended. The obvious consequence would be additional administrative costs for members and beneficiaries without any clear benefit. We also wish to emphasize that the principle that IORPs should remain fully responsible when they outsource functions or activities to third parties can be easily subject to different interpretations across Europe, and within each Member State to the extent that it is often up to judges to decide on a case by case basis. We therefore believe that it would be hard to converge towards an unambiguous specification of the responsability for outsourced functions. By way of illustration, EIOPA notes that when outsourcing investment activity, IORPs are required to ensure full understanding and control of the investment process as a whole. Whilst this requirement seems all right, we have reservations against the additional clarification brought by EIOPA, i.e. that IORPs	

	should remain fully responsible for *all aspects* of the investment process. Clearly, this requirement goes too far, the more so because it is accepted that IORPs appoint professionals to carry out certain functions precisely when they lack sufficient expertise to make fully informed decisions. In general, we consider that what matters is that IORPs are required to have a legally enforceable document for any outsourced activity, in a written form. This response is also valid for questions 81-82.	
81.		
82.	The contract elements must remain flexible so that they can be adapted to suit each particular outsourcing situation or Member State specifics.	
83.	We have reservations regarding the proposed treatment of **<u>depositaries</u>**. We recognize that the appointment of an independent custodian may be an effective way to safeguard the physical and legal integrity of the assets of a pension fund. It is also clear that custodians may also provide additional services. However, the appointment of a custodian is not the only way to ensure the safeguarding of the pension fund assets. As noted by the EIOPA, the OECD core principle 6.8 of occupational pension regulation notes that „custody of the pension fund assets may be carried out by the pension entity, the financial institution that manages the pension fund, or by an independent custodian". The OECD/IOPS good practices for pension funds' risk management systems do not contradict this principle when they highlight that „in addition to – and working with – the internal control mechanisms, independent external parties should be appointed as part of the risk management of a pension system". Indeed, the good practices acknowledge that different institutions can be considered independent third parties, in particular external auditors, actuaries and custodians. Thus, it is misleading to suggest that the appointment of custodians is recommended by the OECD/IOPS. In fact, the comments given by the OECD/IOPS emphasize the role played by the compliance function, actuarial analysis, internal audit and external auditors.	

	While it is clear that the conditions of operation of IORPs should be based on properly constituted rules, including regarding the safekeeping of assets, it is up to the competent supervisory authority to make sure that the rules are applied in the best interests of members and beneficiaries, in line with the current IORP Directive. We are therefore concerned that a compulsory requirement for the appointment of a depositary would not fit the jurisdictions where there is no such requirement, cause unjustified changes to their pension systems, and lead to an increase of costs of IORPs that can directly or indirectly impact member/beneficiaries. The problem is well illustrated by EIOPA in its analysis of the trust based system, when it notes that „appointing a depositary with oversight duties will lead to a duplication of role/cost with no extra benefit in terms of members/beneficiaries, protection". In our view, this point provides a sufficient reason for accepting that IORPs without legal personality in a trust based system should not be required to appoint a depositary. We also have reservations regarding the proposal to require that the appointment of a depositary for safe-keeping of assets and oversight function for DC schemes in general. Such schemes are often managed by IORPs without legal personality, and as noted by EIOPA, in this situation, „the assets of members and beneficiaries are segregated from the assets of the management company" in charge of managing the pool of assets. It is therefore unclear what would be the extra benefit in terms of investor protection of making the appointment of a depositary compulsory. The regulation of UCITS, AIF and asset management companies in general are sufficiently strong to ensure the safety of the DC schemes assets they manage, in particular in terms of custodian/depositary requirements. All the more so that there is a common practice to have contractual relationship between the IORP, the investment manager (in charge of the investment of the assets) and the custodian/depositary appointed by the investment manager. We fear that in situation like that appointing a depositary with oversight duties would lead to a duplication of role/cost with no extra benefit. Against this background, we are in favor of leaving the flexibility in the appointment regime to each Member State. We can support however the proposal to introduce general requirements that should be verified in case a depositary is not appointed. This response also applies to questions 83-88.	

84.	We very strongly agree with EIOPA that there is a need for a study to assess the real impact of the proposed new requirements. This is particularly important as the impact could significantly increase the cost of IORPs, and the expected retirement income of members/beneficiaries.	
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89.	EFAMA agrees with the analysis of the options. We are also concerned about the negative impacts of option 2 in terms of increased costs and potential member opt out and withdrawals from employers willing to sponsor.	
90.	EFAMA welcomes convergence of provision of information to supervisors, in certain fields, where appropriate and provided it would not lead to disproportionate reporting requirements. We think this is a sufficient first step towards convergence of information provision.	
91.	EFAMA strongly supports the introduction of a **KIID-like document for pension schemes** to ensure that members receive relevant pre-enrolment information at or before joigning to provide future members with comparable information on pension schemes and enable them to make the choices they are asked to make and compare, including between IORP schemes and a life insurance products. The adoption of the KID for pension scheme would also represent a valuable and practical step to strengthen financial literary and investor education. We consider that the requirements are not only necessary for DC schemes. A KIID-like document could also be helpful where employers/IORPs carry the investment risks and members are not asked to make choices, to allow members compare the relative quality of their pension schemes with other schemes and long-term savings products. This is essential to create a level playing field in the lon-term savings market.	
92.	We support the introduction of a KIID-like document for pension schemes.	

	We consider that the elements of the UCITS KIID give ample possibility to provide essential product information. This said, it is clear that some adjustments will be required, in particular to provide information beyond investment to take into account the very long-term horizon of retirement savings and the specific information that are important to pension scheme members (e.g. employer contribution, tax relief available, etc). This means in particular that performance scenarios should be included in the KID and that the assessment of risk of different investment options and asset allocations in DC schemes should be conditioned to the time horizon of the member and may not be an objective characteristic of the option. Regarding the content, we agree with EIOPA that the presentation of costs and associated charges should be an essential part of the KID. The goal should be to make all costs and types of remuneration transparent. It is very important that the introduction of a KID for pension schemes facilitates comparisons between schemes and IORPs. Indeed, employees may have different schemes to choose from. Often, the underlying investments are similar. This is when it is very important to provide information on which members are able to make sound investment decisions. In these cases, other factors than the ones specified by EIOPA have a great impact on the investment outcome for the individual scheme member. Scheme solvency is mentioned, but there are also administrative fees associated to the scheme itself, costs for benefits and so on. Another important factor differing schemes are longevity assumptions. It is very important to make these factors visible and understandable for the scheme members. Where an IORP is employer sponsored the member may not have a choice of IORPs without loss of the employer contribution, the disclosure must include the value of this investment so that members are able to understand the value of this.	
93.	EFAMA agrees with EIOPA that finding an appropriate way of presenting a **risk/reward profile** that is meaningful for all pension schemes will be challenging. In general, we consider that short-term risk measures (such as the one-year VAR used in the solvency II framework) would not be appropriate to use for the long-term assessment of risk.	

	We strongly believe that the risk ranking should vary with time horizons, and allow for a more favourable ranking of equity-oriented investment options for long horizons. It would be even better if the risk measure was adjusted according to each scheme members time to pension – thus illustrating increasing equity risk for shorter investment horizons. We also agree with EIOPA that it would be worth exploring the pros and cons of labeling the investment options according to their investment horizon and not to the level of risk. We agree that that performance information should always be included in a KID, as it is an important part of members' decision-making process. And we strongly support EIOPA's view that performance scenarios would be very useful in the presentation of performance information. Dealing with this via level 2 implementing measures is a good idea.	
94.	EFAMA believes that a **personal annual statement** is essential. We would like to stress the importance of providing consistent information on levied costs, including administrative costs and the costs of specific benefits/guarantees. While taking note that it might be "*impossible and undesirable*" to fully harmonize the information requirements regarding occupational pensions foreseen in Article 20(7), we strongly agree with EIOPA that the minimum harmonization level could be raised especially for DC schemes.	
95.	We agree that the **format of a potential KIID-document** couldn't be *fully* standardized at EU level, as country-specific information is often essential. This said, standardization of the KID is crucial to foster comparability among pension schemes, one of the key aspects of this initiative. Tailoring of the KIID will be necessary to a certain extent, but it should be limited in order to ensure comparability, and some key elements should be required for all KID. Concretely, in our view, the structure of the document needs to be standardized and the basic elements/building blocks should be the same for all schemes, extending to aspects beyond investment. Certains parts of the key information and its presentation should also be standardized and consistent as possible, irrespective of tailoring otherwise allowed. We agree with EIOPA's suggestion to define principles at Level 1, while detailed technical	

	requirements would be tailored by means of implementing measures. With regard to the latter, the implementing measures to the UCITS Directive should be considered a starting point for regulatory action.	
96.	EFAMA considers it is very important to introduce information requirements not only for DC schemes but also for DB schemes. This is because of the arguments in response to Question 92. EFAMA agrees that the additional costs for IORPs are less significant than the benefits in terms of protection of members and in terms of information and help in taking informed decisions. We recognize the difficulties of the task, and therefore recommends that sufficient time be given to in-depth analysis and stakeholder testing.	