	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 Federation for Retirement Provision (EFRP)** Contact: Mr. Matti LEPPÄLÄ, Secretary General / CEO Koningsstraat 97 – 1000 Brussels – Tel. + 32 2 289 14 14 www.efrp.eu – efrp@efrp.eu	
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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
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Question	**Comment**	
General comment	The fundamental premise in the Call for Advice is that supervisory regulation should be risk-based. The EFRP agrees with this starting point and supports this. The proposals in the field of risk management, governance and communication will improve the current directive and further facilitate workplace-based pension provision. We wholeheartedly support the EC's objective to achieve sustainable, safe and adequate pensions and to raise the awareness of European citizens to save for their pensions. In the draft response to the Call for Advice the principle of a risk-based approach is extended, however, to imply that risk-based capital requirements should be harmonized on a European level, with a strong focus on pension security and scheme funding levels. The EFRP firmly disagrees with these proposals. The key objective should be pension security for members. The EFRP fears that the proposed holistic balance sheet approach will not contribute to this objective and could, indeed, run counter to the objectives of security, adequacy and sustainability. To the EFRP the debate on workplace pension provision and the rules by which workplace pensions are provided is a political one and not simply a technical one. The EFRP therefore calls for a political debate within the European Commission and with stakeholders and national governments. The approach to EU pension policy should be all-encompassing, since pensions are an issue for all European citizens. The revision of the IORP Directive should be closely linked to other EC pension-related initiatives, such as the EC White Paper on Pensions, and macro-economic and growth-related initiatives. In particular, the White Paper and the review of the IORP Directive must have regard to the most pressing issue affecting the European Union and its citizens, namely economic growth and employment and the factors at the heart of the 'Europe 2020 Strategy'. A strong European economy and full employment are critical to good quality pensions (mandatory first pillar and workplace second pillar) for Europe's citizens, now and in the future. We are very concerned that the additional strains placed on employers by the proposed harmonized capital requirements could weaken pension scheme adequacy, decrease the supply of risk-bearing capital in the EU economy and increase unemployment. Pension security is about much more than scheme funding levels alone. An all-encompassing approach should take into account the full range of mechanisms that pension institutions in different	

	Member States already use to ensure that pensions are safe and secure. This also includes the degree of reliance on the first pillar (mandatory state) pensions. Any assessment of work-based pension scheme security must recognise the diversity of pension systems across the Member States and security mechanisms used to provide adequate workplace pensions. One should focus on long-term sustainability of pension schemes rather than on their short-term solvency levels. According to the EFRP, the risk level of a pension promise is currently part of the pension agreement itself. Other elements are, for example the accumulation of pension rights, the contribution level and whether or not there is indexation. This balance is different in all the Member States and is intertwined with national Social and Labour Law. Therefore, the EFRP believes the IORP review should not cover the Pillar I issues of Solvency II, but instead should focus on the Pillar II and Pillar III elements. The Pillar I elements of Solvency II should not be included in the revised IORP Directive. On the other hand, many elements from Pillar II and Pillar III could be adapted to cover IORPs. The EFRP believes that it is crucial to respect the principle of proportionality. The EFRP is very concerned about the probable effects on employers, members and future beneficiaries if the Pillar I elements of Solvency II were to be applied to IORPs. Applying to IORPs the same Solvency Capital Requirements as in the Solvency II Directive would result in a drastic increase in their required assets. In the short term, pension funds would have to ask their employers, companies and employees for extra support. It would be unlikely that employers could provide this extra money or these required additional assets. If that is not possible, this will lead to lower benefits. The EFRP is also concerned that Solvency II Capital Requirements could lead to a de-risking of investment portfolios – shifting pension fund investments out of equity and into fixed interest investments – threatening future returns and thus, benefit levels. It is not only the retirees, employers and employees that would be affected by a Solvency II regime for IORPs. There would also be negative effects on the total European economy as higher pension contributions and sponsor support automatically lead to higher labour costs and that will make the European economy less competitive. In addition, less capital will be available for investments which	

	will have a negative impact on employment. Lower pension benefits will hurt the purchasing power of retirees and thus consumption in Europe. As a consequence of derisking investment portfolios, there would also be less capital available to companies. This would happen at just as the EU is looking for investment in EU companies. IORPs are important suppliers of capital to listed European multinational corporations, small and medium-sized enterprises (SMEs) as well as a great number of innovative start-ups. A Solvency II regime for IORPs would overly limit their opportunities. This outcome would have a negative impact on growth and employment in the European Union. The proposed revision is not in line with Europe 2020 Strategy. In addition, we are concerned that the EU debt crisis has already reduced FDI in European companies. The aim of safe, sustainable and adequate pensions in Europe would also be jeopardized. With many countries scaling back public pensions, the foremost priority should be ensuring wide scale coverage of supplementary workplace pensions. One main challenge for policymakers should be to extend the provision of workplace pensions of EU citizens who presently are not covered by workplace pensions. The EFRP recalls the intention of the Commission not to negatively affect the supply and cost-efficiency of occupational retirement provision in the EU. Given the potential negative impacts of the revision of the IORP Directive, it is essential that a thorough impact assessments will occur; before any legislative proposals are made. These impact assessments should takes account of both the macro- and micro economic consequences of the proposals. The advice of thorough impact assessments must be a core element of EIOPA's advice to the Commission.	
1.	The EFRP agrees with EIOPA that the question of scope is deeply political. The Commission and ultimately the Member States must agree on what they consider the appropriate and fair scope of the IORP Directive. The EFRP notes however, that one of the main drivers for the review of the IORP Directive was the	

	desire to widen its scope. Now that EIOPA and the Commission have signalled that the extension of the scope will be more limited than foreseen and there is a more limited approach to the "level playing field" coveted by the EC, one of the main justifications given for the review by the EC disappears. The case for review is therefore weakened. The EFRP considers the mandatory funded pension systems found in the Central and Eastern European Member States to be part of the national social security systems of those countries, and therefore finds that they should fall outside the scope of the IORP Directive. Social security contributions are diverted to private providers through the national social security clearing houses. In contrast to the systems mostly found in Western European Member States, the employer has no role in the establishment of the scheme and there is no close link between the employer and the provider. The EFRP is in favour of a new analysis of Regulation 883/2004, of which schemes could be considered social security, before determining the scope of workplace pensions, which complements social security pensions. Agreement can then be found on what are truly "occupational pensions" and what are "1st pillar pensions" before revising the occupational pension framework. The idea of "member protection" of citizens covered by schemes falling outside the scope seems flawed, since social security systems do not really have "members". While consumer protection does not seem the appropriate form to deal with these issues of ensuring that guarantees are fulfilled and benefits are paid out, the EFRP would not be opposed to further coordination between member states, for example through the SPC or the OMC in order to improve protection of those covered by social security schemes carried out by private providers. EIOPA hints at the "clarification of the dividing lines between 1st, 2nd and 3rd pillar", which could "enhance a consistent application" of the IORP Directive (4.5.). The EFRP is very much in favour of, and would strongly encourage EIOPA and the Commission to adopt a typology or taxonomy of European pensions before further regulating this area.	
2.	The EFRP favours consistency of application, and therefore is in favour of including all occupational pension funds from all Member States in the scope of the Directive, and for excluding all those that	

	are not occupational.	
3.	The EFRP underlines that this is a deeply political issue. The EFRP prefers option 1: do not change the current IORP Directive. Option 2 should be rejected as the uneven application of the same rules across Member States would lead to an even more complex set of rules for IORPs and would present yet another obstacle to the further development of an internal market for occupational pensions. On a more fundamental level, this option would defeat the purpose of the scope debate, as it would create a more differentiated rules across Member States, thus creating more obstacles to cross-border pension provision. Option 3 should be rejected since it would blur the distinction between occupational and non-occupational pensions, or do away with the concept of "occupational". Since the current IORP Directive was adopted to reflect the specificity of occupational pensions, this option would take away the rationale for the IORP Directive itself.	
4.	The EFRP does not identify any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.	
5.	The EFRP agrees that the current definitions are insufficiently precise. The EFRP also notes with satisfaction point 5.3.20., which states that "it is possible that the lack of take-up is not due to failing of the Directive or Member States interpretations, but to other reasons such as a basic lack of demand". The complexities of national Social and Labour Law and tax laws are among these reasons, as are practical difficulties in the cooperation between prudential supervisors and other Host State agencies, as well as cultural barriers. The EFRP agrees with the new proposed definitions of "host member state" and "sponsoring undertaking". The EFRP would point out that there are a limited number of cross-border situations where the present definitions may lead to different interpretations. In these situations, we would call for a	

	flexible application of the rules and to keep in mind the purpose of stimulating mobility of workers and of facilitating cross-border IORP activity. The EFRP would warn against including the power for Host State supervisors (or authorities of the Member State of the SLL) "to take measures against the IORP", as proposed by EIOPA in its final paragraph of chapter 5.5. (p.35). One of the prerequisites for more cross-border workplace pension provision is having one supervisor for cross-border IORPs, which in the EFRP's view should be the Home State supervisor (except where SLL is concerned).	
6.	NB the EFRP would prefer to speak about " safeguarding the interest of scheme members" or "the protection of pension benefits" instead of "consumer protection" when discussing occupational pensions (see 6.2.12., 6.2.13. and 6.2.14., for example). The EFRP prefers option 1, leaving it to Member States to decide to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ringfencing is a "subjective area" in its 2010 report. The EFRP finds that studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted. The EFRP believes that the Commission should not, at this moment, harmonise ring-fencing rules, and let Member States keep the power to prohibit ring-fencing where national rules already do so. The EFRP considers ring-fencing rules more important in mandatory systems than in voluntary systems. In member States where ring-fencing is mandatory, some of the measures proposed in paragraph 7 on page 54 could be introduced, subject to proportionality and not placing unreasonable demands on IORPs.	

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7.	The EFRP wants to avoid an "overkill" of ring-fencing as this would lead to a loss of economies of scale that could be achieved and to increased administrative costs for IORPs. It would also call on EIOPA and the EC to respect Member State regulations in this area. A fair balance must therefore be struck between protecting benefits on the one hand and the need for IORPs to function effectively, including in stress situations, on the other.	
8.	The EFRP is not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the Host State.	
9.	The introduction of privilege rules could perhaps be envisaged, and the EFRP sees the advantage of increased members protection. However, given the differences in approaches between Member States, more analysis is needed before any rules are adopted. The EFRP considers that privilege rules are part of national contract, commercial and insolvency law. Given that Member States enjoy national sovereignty in large areas of these legal fields, Member States should not be asked to introduce privilege rules at national level.	
10.	The EFRP agrees that option 2 is the better one. It agrees with EIOPA that there should not be a "fit-for-all" definition of prudential law (7.3.7.), and that Social and Labour Law varies across Member States. The EFRP finds that the full funding requirement in case of cross-border activity is contrary to the principles of the European single market and presents an obstacle to cross-border activities.	
11.	EFRP broadly agrees with the impact that EIOPA foresees. The EFRP would warn against the creation of an unregulated area of rules, which fall neither within the sphere of prudential regulation nor of Social and Labour Law. The EFRP reiterates its stance that prudential regulation and Social and Labour Law should mutually exclude eachother and that there should not be a *tertium genus* of regulation.	

	It should be recognised that, while option 2 would reduce the number of possible conflicts between supervisors, it cannot pre-empt all possible conflict situations in the future. As stated in the response to the first consultation, the EFRP would propose a broad, inexhaustive definition of prudential regulation, which would include the sets of rules that regulate the production and delivery of pension benefits, i.e. the establishment, functioning and the winding-up of the entities that deliver benefits. Social and Labour Law would be seen as the rules that arrange or ensure that the pension promise or employment benefit is likely to be delivered. The EFRP would call on EIOPA to closely associate the Member States to the elaboration of any definitions or descriptions. Setting security levels is part of Social and Labour Law, since it is a trade-off between the benefit level, security, adequacy and affordability of pensions. It would add that it would not be useful to set hard definitions in this area now, as they would risk setting the debate in stone for years to come, while Social and Labour Law and prudential regulation continue evolving.	
12.	The EFRP rejects the proposal for a holistic balance sheet. The EFRP supports the idea of taking into account all the risk mitigating instruments that an IORP has. However, the complexities of a holistic balance sheet make this an unsuitable as a primary tool of supervision. Workplace pensions are based on social and cultural traditions and strongly linked to first pillar pension provision in the different Member States. Pension security is about much more than scheme funding levels alone and a single approach to pension security, which only focuses on short term solvency, will jeopardize many existing European pension systems. The main assumptions underlying the holistic balance sheet approach are taken from the Solvency II model i.e. market consistent valuation of assets and liabilities, one year time horizon, 99.5% confidence level etc. This would require a significant increase in pension scheme funding and EIOPA must make this clear in its advice to the Commission. This is due to the use of different (lower) rates of discounting the liabilities and the implementation of (higher) capital requirements. The capital	

	requirements aim to provide a high level of pension security in the short term, which would come at a very high price. Pension funds would have to ask their employer companies and employees for extra support. It is unclear and in many cases unlikely that this addition funding could be met. If that is not possible, this will lead to lower benefits. The EFRP is also concerned that Solvency II capital requirements could lead to a de-risking of investment portfolios, threatening future returns and thus, benefit levels. It is not only the retirees, employers and employees that would be affected by a Solvency II regime for IORPs. There would be negative effects on the total European economy as higher pension contributions and sponsor support automatically lead to higher labour costs and that will make the European economy less competitive. In addition, less capital will be available for investments which will have a negative impact on employment. Lower pension benefits will hurt the purchasing power of retirees and thus the consumption in Europe. As a consequence of derisking investment portfolios there would also be less capital available to companies. IORPs are important suppliers of capital to listed European multinational corporations, small and medium-sized enterprises (SMEs) as well as a great number of innovative start-ups. A Solvency II regime for IORPs would overly limit their opportunities. This outcome would have a negative impact on employment in the European Union. The proposed revision is not in line with Europe 2020 Strategy. In addition, we are concerned that the EU debt crisis has already reduced FDI in European companies	
13.	The EFRP agrees that assets should be valued on a market consistent basis. However, market consistency doesn't imply that it has to be valued Marked-to-Market (MtM). The current definition of market consistency should be clarified in order to prevent the misunderstanding that market consistency is a proxy for MtM. In appropriate circumstances, valuations rules should permit methods that reduce short-term volatility of values over time for actuarial and funding purposes. For a long term investor like an IORP such an addition is not only reasonable but required, also with respect to the desired countercyclical policy of IORPs (*Call for Advice Chapter 8*). Therefore, the EFRP advises EIOPA that the valuation of assets should not always be valued MtM: exemptions should be possible. For example, it should be	.

	allowed to value long term bonds which are bought to hold and to value these hold to maturity. Due to the long term horizon for example, IORPs are able to invest in more illiquid and return-seeking assets. For such kind of investments marked-to-market valuations are not always possible. It should also be possible to deviate from the MtM in cases of severe market disturbances. Stock prices, interest rates and credit spreads can be very volatile during a financial crisis: markets can overreact and sometimes it is very questionable if these fluctuations can be justified in economic terms. The main problem hereby is that the MtM valuation of assets directly maps these movements into the balance sheets although this short-term volatility is not of great importance especially for IORPs: IORPs typically have a long term investment horizon.	
14.	The EFRP prefers option 1 and agrees with EIOPA that no reference should be made to the transfer value, since the concept of transfer is not fully applicable to IORPs in the same way as this is used for insurance companies. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, IORPs do not have this forced threat. The EFRP also especially agrees with the point made that the transfer value for a pension contract would differ in case the liabilities would be transferred to an insurer or to another IORP. This makes the concept of transfer value unclear and therefore ineffective.	
15.	The own credit standing should never be taken into account in valuing the liabilities. Taking the credit standing of the fund into account, is denying the going concern principle.	
16.	The EFRP is in favour of option 1 not to change the current IORP Directive on this point. There is no need to make sure that supervisory standards are compatible with accounting standards. The EFRP agrees with EIOPA´s remark that the objective of the 2 bases is too different to achieve convergence and considers that the current IAS / IFRS regulation are unfit to form the basis of a solvency regime for IORPs. It should also be noted, however, that not even international accounting standards are consistent. For example, IAS 26 (financial statements of the pension fund) and IAS 39 (financial instruments held by corporates, banks and insurance companies) allow matching or held to maturity investments to be shown at redemption value and amortized cost, respectively, rather than market value, whereas IAS 19 doesn't. EIOPA should, therefore, make clear which accounting standards are meant (local, IAS 19, IAS 26, IAS 39?).	
17.	In amending Article 76(1) of the Solvency II Directive, it should be noted that the term 'obligations' is not necessarily suitable for hybrid schemes in which no explicit guarantee is provided. A provision should be made to accommodate this. We recommend replacing the word 'obligations' with 'current benefits'. We agree that Articles 76(4) and (5) can be added as proposed.	

	With respect to Article 76(3), the EFRP wants to point out that the manner in which liabilities are valued, definitely should not be harmonized (see question 21). The valuation of liabilities could be market consistent, but market consistent can be added without amendments to a new IORP Directive, as proposed by option 2. The EFRP agrees that Articles 76(4) and (5) can be added as proposed.	
18.	According to the EFRP there should not be a risk margin in the technical provisions, as option 3 proposes. EFRP rejects option 3 because it advises a best estimate calculated according to Solvency II. The EFRP opposes the use of a uniform discount rate in order to calculate the best estimate of liabilities. This would be undesirable and unworkable. The EFRP rejects the proposal to include a risk margin into the technical provisions as stipulated in Solvency II (option 1). When IORPs are closed down, they do not have to go to another institution, which is the underlying reasoning of implementing a risk margin. Furthermore, the Risk Margin in Solvency II is based on Cost of Capital. IORPs do not have Capital. The EFRP also rejects the proposal of including a risk margin into the technical provisions in order to create a safety net for wrong assumptions (option 2). Including uncertainty into the technical provisions themselves leads to the risk of piling up prudence on prudence.	
19.	The EFRP is in favour of taking into account only the current benefits without any future accrual. For taking into account also future accruals, and thus automatically also future contributions and future returns, a lot of very influential assumptions should be made, which leads to the risk of making the supervisory framework very dependent on the assumptions and the subjectivity of these assumptions. However, in some Member States there are actuarial methods used which take into account future accruals. In these cases, the actuarial method also allows for future contributions as an offsetting position (principle of equivalence). IORPs should be able to continue using these models in the future.	
20.	Yes, the EFRP agrees with EIOPA that the best estimate of the liabilities should be calculated without	

	any amounts recoverable from insurance contracts.	
21.	The EFRP is strongly opposed both options presented by EIOPA. From a perspective of market consistency, the discount rate should always reflect the nature of the liabilities. Currently, the differences in discount rates are very large between Member States. These differences exist due to the differences in the pension promises and they have historical and cultural roots, and at times reflect national Social and Labour Law. As a result of the different kind of pension plans, also the discount rates for calculating the technical provisions differ. These reflect individual schemes' circumstances. It would not be correct to impose a 'two sizes fit all' model. In order to have the appropriate valuation of liabilities, EIOPA should advice a tailor-made discount rate.	
22.	Yes, service costs to accrued benefits should be taken into account in the value of the liabilities.	
23.	The EFRP rejects both options and believes that only unconditional benefits should be included in the technical provisions. Conditional and discretionary benefits should not be taken into account in the value of the liabilities, given the nature and uncertainty of these benefits. These kinds of benefits are often paid out of extra returns. As long as future extra returns are not taken into account, discretionary benefits should not be in the technical provisions either. EFRP advocates disclosing to members that such possibility for conditional and discretionary benefits exists, but without attaching any value to it in order not to raise unfounded expectations. For the same reason, in order not to raise unfounded expectations, we are not in favour of the concept of surplus funds, as the very mentioning of assets in a surplus fund that could be used for discretionary benefits could possibly be interpreted as an indication that the discretionary benefits will be given.	
24.	Yes, the EFRP agrees that contractual options should be disclosed in the value of the technical provisions.	
25.	The EFRP does not fundamentally reject the idea of splitting the technical provisions into homogeneous risk groups, but on the other hand the EFRP does also not see any significant benefit of this proposal. EFRP thinks that it would be best not to make this mandatory. For small pension funds, such a split up would be overly burdensome. We advice therefore to state the possibility to use this within an internal risk framework that could enhance risk management and transparency.	
26.	The EFRP prefers option 1: Article 81 should not be included in the revised IORP directive, but its principles could be beneficial. However, the allowance for credit risk should not be interpreted as imposing option elements within the value of the reinsurance contract, but rather as a (periodic)	

	assessment regarding the likelihood of receiving the insurance.	
27.	Yes, the EFRP agrees that the IORP Directive should cover the availability of data and the use of approximations in the calculation of technical provisions. Since this is already covered by the current IORP Directive, the EFRP believes that it is not necessary to revise this Article.	
28.	Yes, the EFRP agrees that the IORP Directive should cover the comparison of technical provisions against experience, with appropriate adjustments. Since this is already covered by the current IORP Directive and it is therefore not necessary to revise this Article.	
29.	Yes, the EFRP agrees that the IORP Directive should cover the appropriateness of the level of technical provisions. Since this is already covered by the current IORP Directive the EFRP believes that it is not necessary to revise this Article.	
30.	Yes, the EFRP agrees that the IORP Directive should cover the regulator's power to raise technical provisions. Since this is already covered by the current IORP Directive, the EFRP believes that it is not necessary to revise this Article.	
31.	The EFRP strongly disagrees with the proposal that a new IORP directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II. EFRP recommends that EIOPA should make it clear in its advice to the Commission that Quantitative Impact Studies – on the level of the effect for an individual IORP and on the level of the effects of total pension provision in Member States – should be undertaken *before* Level 1 measures are decided upon. The character of the pension benefit differs from Member State to Member State. As a result of the different characteristics of pension benefits, the way how technical provisions are calculated is also different. A relatively small change of the way technical provisions have to be calculated could have major consequences.	
32.	No, the EFRP disagrees. This would be a direct contravention of the principle of subsidiary. Pensions remain a Member State competence.	
33.	One of the great advantages of an IORP is that it has the ability of risk mitigating mechanisms, just like sponsor support. Sponsor support is an instrument to provide pension security and therefore has to be taking into account. When an IORP can call on sponsor support, it is not necessary for an IORP to have the same kind of capital requirements than an IORP without sponsor support. The same	

	holds for other kind of risk mitigating mechanisms, just like for example a pension protection scheme, intergenerational risk sharing and conditionality of pension benefits. The EFRP is concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. There should be simpler methods to allow for capital relief in case of sponsor support.	
34.	The EFRP is opposed to the application to IORPs of Articles 87-99 of the Solvency II Directive on own funds. IORPs have no own shares, neither do they have subordinated liabilities. The additional concepts of ancillary own funds and surplus funds seems therefore superfluous for IORPs. The same holds for the tiering of own funds. This concept is not applicable for IORPs.	
35.	Yes, the EFRP agrees that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive. Subordinated loans can serve as a security mechanism for all types of IORPs. The subordination feature can offer loss absorption in problematic, but going concern situations. Also according to the OPC report "*Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector*", Member States confirms that subordinated loans are a useful security mechanism.	
36.	There should not be a uniformed level of security for IORPs across Europe according to the EFRP. In most Member States the level of risk of a pension promise is currently part of the pension agreement itself, and is just one of several elements. Other elements are, for example, the accumulation of pension rights, the contribution and whether or not there is indexation. This balance is different in all the Member States and is intertwined with national Social and Labour Law. Just like the fact that it is not desirable that the IORP directive prescribes a uniform level of contribution rates, accrual rates or indexation policy, also levels of security of pension income should not be prescribed by European legislation. Also EIOPA underwrites this in their view: "*Some Member States provide relatively low benefits with high funding/security requirements while others provide higher promised benefits but with a lower level of funding*". The implication of this is that EU solvency regulation should recognize the different levels of security accepted by national Social and Labour Law. Due to these differences and the opportunity of cutting pension rights in different Member States, setting the level of security across the EU, regardless of the presence of (ex-post) adjustment mechanisms of pension benefits, would risk communicating to members a false sense of "uniform" security.	

	EIOPA states not to advice on a specific probability level. The EFRP agrees on this, but would like to add the suggestion that EIOPA, considering the arguments mentioned, advice the EC not to pursue a uniformed security level.	
37.	As discussed earlier, a harmonized confidence level is meaningless for IORPs. According to the EFRP, the risk level of a pension promise is currently part of the pension agreement itself. Other elements are, for example the accumulation of pension rights, the contribution level and whether or not there is indexation. This balance is different in all the Member States and is intertwined with national Social and Labour Law. Besides that, IORPs typically have a long term investment horizon. A solvency framework, based on a Value-at-Risk measure on a short term horizon will not be in line with a long term investment policy. For these reasons the EFRP suggests not recommending a specific level of confidence or specific time-horizon for IORPs.	
38.	The EFRP firmly rejects the proposal of applying the Solvency II-rules for calculating the SCR to IORPs. Pension security is about much more than scheme funding levels alone. A broader approach is required, taking into account the full range of mechanisms that pension institutions across different member states now use to ensure that pension incomes are safe and secure. An IORP can for example call on other kinds of risk-mitigating elements, such as a protection fund and a sponsor guarantee. Additionally, Solvency Capital Requirements in this context are superfluous, costly and will likely lead to a further decline of employers' willingness to offer supplementary pensions. The EFRP considers this to be an inefficient use of capital. Extending the Solvency II framework to IORPs would increase the systemic risks in European financial markets. The EFRP fully agrees with the policy analysis of EIOPA that changing the IORP Directive by applying a risk-based calculation of Solvency Capital Requirements as in the Solvency II Directive, but taking into account the specificities of IORPs such as the existence of security and adjustment mechanisms, has the negative effects of additional cost (differing in Member States) for IORPs and sponsors which could undermine the cost-efficiency of workplace pension provision in the EU and contains the risk of employers reducing workplace pension provision (at least for future employees) in the EU. The EFRP believes that these disadvantages outweigh the possible benefits and thus are contrary to the goal of	

	providing safe, adequate and sustainable pension provision in Europe. The EFRP therefore urges EIOPA to ask for an impact assessment to examine the effect of a Solvency II style SCR on the cost-efficiency and coverage of occupational pensions in Europe.	
39.	EFRP's strong preference is *not* to impose the SCR.	
40.	EFRP's strong preference is *not* to impose a uniformed MCR. This is because of the kind of pension contract differs from Member State to Member State. This implies that it differs if IORPs can have a funding deficit or not. In some Member States this is not possible because IORPs cannot call on risk mitigating instruments. In some Member States, the pension deal is based on intergenerational risk sharing. In such kind of a pension deal, it is possible to have a funding deficit. Also when an IORP can call for sponsor support, it should be possible for an IORP to have a deficit and therefore a negative MCR.	
41.	One of the great advantages of an IORP is that it has risk mitigating mechanisms, like a pension protection scheme. A pension protection scheme is an instrument to provide pension security and therefore has to been taking into account. When an IORP is covered by a pension protection scheme, it is not necessary for an IORP to have the same kind of capital requirements than an IORP without. The same holds for other kind of risk mitigating mechanisms, just like for example sponsor support, intergenerational risk sharing and conditionality of pension benefits. The EFRP is concerned about the complexity and the subjectivity when determining parameters if a pension protection fund would be part of a holistic balance sheet. There should be simpler methods to allow for capital relief in case of sponsor support.	
42.	The EFRP does not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. The operational risks of Defined Contribution schemes are generally already covered by other Directives (UCITS, AIFM and MIFID Directive). Therefore it would be advisable to look carefully to the elements of operational risks that have been covered by other Directives already. According to the EFRP the best way to tackle operational risks is through a focus on better governance and appropriate risk management.	
43.	According to the EFRP, Article 136 of the Solvency II Directive could be valuable for IORPs. When IORPs have procedures in place to identify deteriorating financial conditions, they are well prepared	

	how to handle in a situation of stress. The inclusion of Article 141 in a revised IORP Directive is appropriate only with some amendments to reflect specific IORP situations. An insurance company has shareholders, which implies that the interests of the shareholders could be opposed to the interests of policy holders. However, IORPs do not have shareholders and have only stakeholders, which are all negatively hurt by a financial shock. Any additional supervisory action in case of deteriorating financial conditions should therefore not focus purely on restoring a solvent position, but on a fair distribution of any necessary measures. This is in relation with Social Labour Law. We want to stress however that such a decision is primarily the task of the board of trustees and not of the supervisor. Any overruling power should therefore only be allowed in case the board is no longer in control of the situation.	
44.	The EFRP strongly supports option 1. This option retains the current flexible position on recovery periods. The recovery periods out of Solvency II are not appropriate for IORPs. The OECD paper "*The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-Cyclical Funding Regulations*" (2010) shows that the current recovery periods in the different Member States are much longer than prescribed in Solvency II. Shorter recovery periods will stimulate IORPs to a procyclical investment policy, which does not only harm the pension incomes, but also the European Economy as a whole. After the crisis in 2008, many national regulators decided to lengthen the recovery period due to the character of the crisis. Such kind of flexibility should also be possible in the revised IORP Directive. IORPs should have longer recovery periods than insurance companies or banks, because of the long-term character of the liabilities of an IORP and the fact that pension funds cannot be subject to 'bank-runs'. This is – economically – an advantage of IORPs. The revised IORP should take this into account. It is the opinion of the EFRP, that when IORPs will be confronted with the shorter recovery periods like in Solvency II, this would not only seriously harm the pension provision for participants, but it will also harm the total economy: short recovery periods forces IORPs to a procyclical investment; contribution and benefit policy. Therefore the EFRP advices EIOPA to plead for a quantitative impact assessment, before a decision is taken about recovery periods.	

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45.	Yes, EFRP agrees that, in extreme cases, the supervisor should be allowed to impose the prohibition to dispose of the assets of the IORP.	
46.	Article 142 of Solvency II is not appropriate. Especially estimates of management expenses and estimates of income and expenditure in respect of direct business are not relevant for an IORP. A projection for the upcoming years should be the basis for a recovery plan of an IORP. Such analysis shows the prediction of the financial position of the IORP, including all the paid benefits, received contributions and expected returns. Furthermore, the recovery plan should contain the contribution policy, the investment policy, the indexation policy and the policy of the IORP with respect to cutting benefits.	
47.	The prudent person principle should according to the EFRP remain the basic principle in a revised IORP Directive. The prudent person principle forces IORPs to make only investments which serve the interest of participants and pensioners. Investment rules should be consistent with the retirement objective of an IORP, based on the (nature and duration of) future liabilities, and be based on appropriate risk management.	
48.	The prudent person principle has a qualitative investment basis. According to the EFRP the prudent person principle will achieve optimal investment results. The quantitative restrictions with respect to investing in the sponsor undertaking should remain. Other restrictions, however, would have a negative impact on investment performance. Principles-based supervision (prudent person) is therefore preferable to quantitative requirements. The review of the IORP Directive is an ample opportunity to abolish the current restrictions in the existing IORP Directive which gives Member States the option to implement quantitative investment restrictions.	.
49.	There should be no differentiation in investment provisions between defined benefit and defined contribution pensions. In both cases the prudent person principle should be the basic principle. Any deviation from that principle will result in suboptimal investment outcome.	
50.	According to the EFRP the prudent person principle will get an optimal investment result. Other restrictions to the investment policy of an IORP will give a suboptimal result.	
51.	Subordinated loans should be exempted from the prohibition of borrowing. We advise to make clear that borrowing should be possible, only for effecting investment management (efficient management) or for risk reduction. Thus, for example swaps used for risk management purposes should not be considered as borrowing in this sense, and should therefore also be allowed.	

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52.	IORPs could contribute to the global financial stability and European economy with having a countercyclical policy. A lot of IORPs have the ability of having a funding deficit. Due to this ability, IORPs do not have to force their sponsor and participants to a huge increase of contributions and that is beneficial for the economy. There is a strong correlation between the probability of a funding deficit and an economic downturn. An increase of pension contributions during an economic downturn will have a negative impact on the recovery due to higher labour costs and lower consumption of participants. Besides that, a lot of IORPs have a countercyclical investment policy. This contributes to stability on global financial markets. According to the EFRP the ability of having a countercyclical policy is something to be careful on. Therefore, the EFRP advises EIOPA to plead for an IORP Directive which stimulates a countercyclical policy and an impact assessment in order to see the macro-economic effects of a revision of the IORP Directive. The EFRP agrees in principle with EIOPA advice on Article 136 and 141. However, the current method to calculate the equity dampener is not appropriate for IORPs. The average return period should at least be increased from three till six years. If this is not retained, the EFRP favours leaving out the equity dampener (option 1). In addition, the EFRP asks EIOPA also to pay attention to the relation between counter cyclicality and recovery periods, capital requirements and the discount rate for the valuation of assets and liabilities which were addressed in the previous questions. For example, if a discount rate is stipulated that in economically bad times is low and high in economically good times, that means that in bad times IORPs will be poor and rich in good times. This provokes pro-cyclical behaviour. The same holds for an obliged derisking of the investment mix during an economic downturn.	
53.	Yes, the EFRP generally agrees with EIOPA's advice that the content of articles 29 and 31 of Solvency II could be introduced without changing the terminology. However, it urges EIOPA and the Commission to respect the diversity of national occupational pension systems and the degrees of regulation and supervision to which IORPs are subject. Any rules in this area should therefore respect the principle of proportionality: the objective of faciliatating efficient management and administration should preclude the supervisor from imposing excessive disclosure requirements on IORPs.	

	The EFRP agrees that these rules would make explicit the elements that are already implicitly included in the IORP Directive. Importantly, the EFRP sees the risk of a steep increase in supervisory costs for IORPs. This should be avoided, since higher supervisory costs will be to the detriment of members' benefits.	
54.	The need to enhance benefit security, differences between IORP and insurance supervision and diversity of IORP are indeed issues that justify a difference in treatment between insurers and IORPs. The EFRP would also point to other differences between IORPs and insurers: The governance structure justifies different treatment: the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the sponsor to back the pension promise, where IORPs are concerned justifies a difference in treatment. IORPs are not-for-profit and often have no or very few members of staff, and no shareholders. There is therefore no incentive to increase "business" or "profits", or to "diversify" activities, which is different from many (though not all) insurance companies. Unlike insurance companies, pension schemes meet their liabilities over the long term and in a reasonably predictable way. IORPs have a number of built-in flexibilities (for example, the potential to adjust benefits or contributions) that allow them to adjust to changing economic or demographic. Many IORPs target a certain level of pension provision, rather than providing an absolute guarantee of it. The different roles and functions of IORPs and insurers should be reflected in supervisory regulation.	
55.	The EFRP agrees that stress testing could be introduced for IORPs through inclusion into the IORP Directive of the material elements from article 34(4) of Solvency II. This should however be subject to proportionality. The proportionality principles should be laid out in level 1 regulation.	

	The EFRP supports tailor-made stress tests for IORPs, which take into account their specificities. The EFRP is not convinced that Article 36 of Regulation 1060/2009 (Credit rating agencies) is an appropriate basis for reinforcing the sanctioning regimes in Member States. Beneficiaries risk having to pay the price, whereas they are the ones who deserve protection. Further analysis is therefore needed.	
56.	The EFRP is opposed to reinforcing the sanctions regime for IORPs. The EFRP would therefore agree to stress testing of IORPs, but would oppose administrative penalties.	
57.	The EFRP would agree with paragraph 15.4.3., that an overall obligation to make penalties public would not be suitable. The EFRP agrees with EIOPA that further analysis is needed here.	
58.	The EFRP believes that IORPs should continue to have one main supervisor, namely in the home state, with Host competent authority supervising the IORP via cooperation with the Home supervisor. The EFRP advises against granting all powers to the Host supervisor, thus giving them the ability to intervene directly without a priori advising the Home supervisor.	
59.	The EFRP prefers option 3: Member States should be free to determine the most suitable ways of supervision for their IORPs. The IORP Directive provides adequate principles for supervisory review process and there is therefore no need to use the Solvency II Directive as a starting point. The EFRP would observe that in many Member States, solid supervisory review processes are in place for IORPs and EIOPA correctly says that articles 13 and 14 of the IORP Directive already contain provisions relating to supervisory powers and information to supervisors. Should supervisory review powers be introduced however, they should be subject to the proportionality principle and should not lead to unreasonable additional costs or burdens for the IORPs.	
60.	The EFRP believes that it would be inappropriate to impose capital add-on requirements on IORPs similar to those applicable to insurers.	
61.	The EFRP agrees with EIOPA that material elements of article 38(1) of the Solvency II Directive could	

	usefully be introduced in IORP Directive. The EFRP finds that there is no added value if having a level 1 principle to empower the supervisory authority to carry out on-site inspections of the IORP's service providers, as suggested in 17.4.2. Article 38(2) should not be applied to IORPs. The EFRP would propose to include the principles that the IORP remains responsible for the activities that it has outsourced. The first contact point should be the IORPs and not the various service providers which perform activities for it. The IORP will be responsible for providing supervisory authorities with all the information required for them to effectively and efficiently carry out their supervisory role. As an alternative, foreign service providers should be able to benefit from having to deal with the supervisor in their home country, rather than having to deal with multiple foreign supervisors when they provide services to IORPs. It is important for IORPs to be able to appoint service providers outside the EU/EEA without having to notify their home supervisor a priori, a limitation that EIOPA correctly identifies in 17.3.4.. The reviewed IORP Directive should bring an end to geographical limitations on outsourcing.	
62.	The EFRP agrees with the EIOPA suggestion that the IORP's home state should be defined as the one where the IORP was authorised or registered. However, we do not see any benefits in an approach that would stipulate that the main administration (= the place where the main strategic decisions of the IORP's executive body are taken) needs to be located in the home member state. In the case of chain subcontracting, it should still be the IORP that is responsible for the activities of the subcontractors. For practical supervisory purposes, foreign subcontractors (i.e. foreign service providers) should be able to benefit from having to deal with the supervisor in their home country, rather than having to deal with multiple foreign supervisors when they provide services to IORPs.	
63.	Yes, the EFRP agrees. The material elements of solvency II requirements for governance could apply to IORPs, subject to a respecting the proportionality principle and to a proper impact assessment of how these requirements can be applied efficiently and effectively to (small) IORPs.	

	A proportionality check should be made at level 1. Further detailing of the rules can then be done at level 2. The EFRP believes that "proportionality" should reflect the nature and the scale of IORPs. Proportionality should be applied through rules equally applicable to all IORPs and not be applied on a case-by-case basis. In this discussion, it should be recalled that the Call for Advice explicitly states that a new supervisory system for IORPs should not undermine the supply or the cost efficiency of occupational retirement provision in the EU.	
64.	Yes, the EFRP agrees that remuneration policy and member participation are areas of difference between IORP's and insurers and this should be reflected in any new rules. A proper impact assessment is necessary on the efficiency and the effectiveness of new governance rules for IORPs in this field.	
65.	The EFRP agrees with the introduction of fit and proper requirements for persons who effectively run the IORP and those with key functions, but not with using Solvency II as a starting point. This is because IORPs are fundamentally different from insurance companies. Any fit and proper requirements should not affect the participation of members, beneficiaries and social partners in the IORP governance structure. The "fit and proper" requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of "fit and proper" requirements that are be similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of the IORPs. A proper impact assessment is necessary in order to make sure that the requirements are proportionate for IORPs. It is important that the Board as a whole has an adequate level of expertise; it should not be required that each and every member of the Board of the IORP fulfil all "fit" professional expertise	

	requirements. The EFRP agrees with EIOPA's assessment that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs.	
66.	Yes, the EFRP agrees that fit and proper requirements should apply at all times and that there should be procedures and controls to enable supervisory authorities to assess fitness and propriety. However, there should be arrangements so as to allow these procedures to be fulfilled in another member state.	
67.	The EFRP believes that these powers should rest with national supervisory authorities, which should exercise them at their discretion. National supervisory authorities are best placed to assess the fitness and probity of those managing the IORP.	
68.	The EFRP welcomes the taking into account of the differences in risk management rules depending on risk sharing mechanism of the pension scheme. However, the response to this issue is not seen as correctly addressed by EIOPA. The risk management should be principle-based rather than rule-based. The EFRP also agrees on the fact that risk management system shall cover all risks including risks which can occur in outsourced functions and activities. The non-exhaustive list of the areas that must be covered by the risk management is seen as not relevant. The addition of the sentence "all significant risks an IORP is faced to" is sufficiently meaningful. The principle of risk management must be applied in a proportionate and reasonable manner. The risk management task must be proportionate to the risks faced by the IORP. However, the EFRP points out the lack of clearness on principles like proportionality or definitions of types of schemes.Indeed, a clear answer must be provided on notions like complexity and nature of the IORP. Morevover, since the *de minimis* threshold provision has been removed, the notion of scale must also be explained. As EIOPA, the EFRP also emphasizes the need for an impact study to assess the real impact of the new requirements. <u>Positive impacts of the proposed principles:</u> More transparency for members through risk management methods introduction in the Statement of	

	Investment Policy Principles (SIPP). More security for members and pensions. Negative impacts of the proposed principles: Burden for IORPs and especially small ones. The lack of resources might entail outsourcing and increase in IORP's expenses which will lead to increase of contributions or decrease of pension benefits. Hence, the principle of proportionality has to be applied efficiently.	
69.	The EFRP is in favor of option 1 and believes it will be more efficient to focus on the risk management function which includes concepts included in the ORSA rather than pile up several requirements that have the same purpose. It will create an accumulation of legislation and requirement which is misleading and too burdensome. The qualitative (intangible risk such as environmental, political and regulatory changes) and long term considerations about risk should be included in the risk assessment as it is proposed in the point 20.2.8 of the Call for Advice 15 on risk management.	
70.	The EFRP believes that, in principle, proper investment rules and efficient risk management are sufficient. ORSA could be seen as an interesting tool for assessing the strategy and internal risk at the IORP level. However, the introduction of ORSA will increase the administrative costs for IORPS, members and supervisory authorities. Therefore, it is very questionable whether an appropriate balance between potential benefits and costs of ORSA can be found.	
71.	The EFRP is not in favor of a holistic balance sheet approach. Nevertheless, if such an approach is adopted, the EFRP stresses that the funding calculations for solvency requirements already cover ORSA provisions. The EFRP acknowledges the fact that ORSA includes both qualitative and quantitative elements contrary to capital requirement. However qualitative elements are also included in the risk management function. Therefore, the introduction of ORSA will create an overlap of qualitative requirements which are too burdensome and confusing.	
72.	The EFRP agrees that Member States should have an option to introduce a whistle-blowing obligation of the compliance function.	

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73.	The EFRP thinks that a one-size fits all solution must be prevented across Europe for IORP's with regard to the compliance function. The introduction of an independent and qualitative compliance function should be left to the discretion of the Member States. The general formula used in the Solvency II Directive could be one of the options to be considered, but not without a proper impact assessment of the consequences if such a function were to be introduced. If such a function is introduced we agree with EIOPA that it should include all legislation with an impact on the operations of an IORP.	
74.	In principle the EFRP agrees with the introduction of an internal audit function, which should be effective, objective and independent from operational functions. But we underline that there should not be too strict requirements in order to make sure that this can as well be fulfilled by means of or as part of outsourcing. As long as the independence and quality of the control, compliance and audit function are guaranteed, the exact specificities of such an internal audit function should be left to the discretion of the Member States. The EFRP welcomes EIOPA's advice that the proportionality principle should be respected.	
75.	The EFRP agrees that the internal audit function, if introduced after a proper assessment of the costs and effectiveness of such a function within an IORP, could have a whistle-blowing obligation in case a Member State so chooses.	
76.	The EFRP acknowledges the importance of actuaries and the fact that their advice is necessary. Concerning the reporting obligation, the EFRP regrets its extension to the supervisory authority. This responsibility should only be internal and the actuarial function should not be obligated to inform the supervisory authority. Concerning the whistle-blowing responsibility, the EFRP stresses that whistle-blowing requirements should apply in cases such as fraud but it should be left to Member States to decide on implementattion . Moreover, legal protections should be in place for the whistle-blower. The whistle-blowing responsibility should be internal only. The actuarial function would solely have to report to the supervisory body, the administrative or the management body of the IORP.	
77.	No, the current IORP Directive should be the starting point.	
78.	The EFRP agrees with the importance of the independence of the actuarial function. Conflicts of	

	interests must be avoided because they diminishing the members/beneficiaries' level of protection and increase operational risks. The independence of the actuarial function should not prevent the IORP from choosing an internal actuary. The independence of the actuarial function must be clearly defined. The term "operational independence" mentioned in the Call for Advice (24.3.24) is interpreted by the EFRP as the possibility for the actuarial function to determine the best way of achieving its duties, including the types of instruments used and the timing of their use. It should be clearly written in order to avoid any misunderstanding or bad interpretation. Moreover, the competence to guarantee the operational independence should be left to Member States.	
79.	The EFRP does not agree with the fact that standardisation of the requirements regarding the actuarial function would necessary lead to cross border activity. Indeed it has been proved that the main hurdles for cross border activity are the differences in Social and Labour Law as well as tax treatment. The EFRP regrets that EIOPA does not acknowledge that the reporting task laid out in 24.3.17a) will also lead to additional administrative burden for supervisory authorities.	
80.	The EFRP does not agree with EIOPA that the material requirements on insurers in respect of outsourcing should also apply to IORP's. The starting point should be Art. 9 of the IORP Directive and respect to the specificities of IORP's.	
81.	The EFRP does not support the standardization of outsourcing processes.	
82.	The EFRP thinks that the clarity of fiduciary duties is essential in outsourcing and it should be defined in a written agreement.	
83.	In the point 26.3.4 of the Call for Advice it is stressed that: "*to assess the need and importance of having a depositary performing safe-keeping of assets and oversight functions, EIOPA has referred to the current and expected future practices among other financial sectors, namely the UCITS and AIFM legal framework and Solvency II*". The EFRP regrets that the review of the custodian/depositary function for the IORP be based on the UCITS and AIFM legal framework. Indeed it should be taken into account that IORPs have different governance structure and investment policies to UCITS and AIFM even those without legal personality.The EFRP acknowledges that AIFM Directive is the lastest and most advanced legislative act on the custodian issue and that it should be taken into account.	

	Nevertheless, the IORP Directive should be the starting point for the review. The EFRP emphasizes that the flexibility and the respect of the subsidiarity principle must be maintained. Therefore the IORP directive should not be amended when it comes to the appointment of a depositary, leaving to Member States the decision of whether to make the appointment of a custodian or depositary compulsory.The EFRP states that, given the heterogeneity of IORPs in the EU, Member States should remain responsible for the appointment regime of IORP. Anyway, according to the OPC report, the appointment of custodian/depositary is compulsory in a majority of CEIOPS members (16 countries).	
84.	The EFRP is in favor of option 1 because the costs of changing the current IORP Directive will outweigh the portential benefits. The main positive and negative impacts of the proposed options are: <u>Option 1: Maintaining Directive</u> <u>Positive impacts:</u> The subsidiarity principle is respected, so it allows for more flexibility. The costs for the IORP and for the members/beneficiaries will not increase. <u>Negative impacts:</u> Keeping the different regimes between Member states. <u>Option 2: Compulsory regime depends on legal form of the IORP:</u> <u>Positive impacts</u>: None foreseen <u>Negative impacts</u>: This option will lead to an increase of charges for the IORP that will be reflected on the members and beneficiaries' contributions or benefits. <u>Option 3: Compulsory regime depends on the type of pension scheme</u> <u>Positive impacts</u>: The appointment of a depositary for DB schemes would remain at the discretion of the Member States. The principle of subsidirity would be at least respected for such schemes. <u>Negative impacts</u>:	

	This option will lead to an increase of charges for the IORPs with DC schemes that will be reflected on the members and beneficiaries' contributions or benefits. This option will lead to uncertainty because of the lack of clearness in the taxonomy of different pension schemes. Indeed, there are many types and pension schemes. As a result, a compulsory regime will force the supervisor to make a distinction between DB and DC but this task is heavily difficult because a lot of hybrid schemes do not totally fall under one of these categories.	
85.	The appointment of a depository should not be compulsory. The principles of flexibility and subsidiarity should be respected in order to leave this decision to the Member States. The implementation of a compulsory regime regarding the appointment of a depositary under the two options will lead to an increase in the fees that IORPs will have to pay to the depositary. This will lead to an increase in the contributions or a decrease of the benefits of the members/beneficiaries.	
86.	The written contract will involve administrative costs. Moreover, the elements of the contract are not known yet (level 2), thus the costs could be bigger than those included in the providing of the flow of information. The written contract should not be needed for small IORPs insofar as a relatively low level of information should be needed to perform the depositary's function. The role of a depositary in terms of safe-keeping will lead to an increase in the fee that IORPs will have to pay to the depositary institution. Furthermore, the costs related to safe keeping are not clear yet since the definition of the term "financial instruments" and the type of financial instruments that can be included in the scope of the depositary's custody functions is still under discussion (26.2.18). The depositary must be liable to the IORP for the losses it encountered. It is essential that assets entrusted to depositaries are safe. It will have a positive impact on the general level of protection for members/beneficiaries. However, the cost of such a regime for depositories could lead to an increase of the fee that IORPs have to pay to depositories. The oversight functions that should be performed by the depository will entail some costs that will have an impact on the fee that IORPs have to pay to them. These costs will trigger either an increase of contributions or a decrease in benefits for the members and beneficiaries.	

	The EFRP agrees with the rules regarding conflicts of interest because such conflicts are seen as costly for members and beneficiaries as well as for supervisory authorities. A rule on conflict of interest will raise the level of protection for the members/beneficiaries.	
87.	The list of oversight functions will be burdensome, notably in the case of a cross-border activity. Indeed, the Social and Labour Law differs among Members States that is why the oversight function and the prospection of information that it implies will entail some costs. The EFRP points out that the depository should not be responsible for ensuring that income produced by assets is applied in accordance with the IORP rules. The EFRP does not agree with the introduction of the whistle-blowing function for the depositary. The depositary should only inform the IORP if any breaches of national laws or IORP rules are revealed.	
88.	The implementation of such general requirements will lead to an additional burden for IORPs. However, the impact is expected to be quite low insofar as these measures are generally implemented at the IORP level.	
89.	The EFRP believes that the current IORP Directive lays down an appropriate information provision regime for IORPs and that this does not need to be modified. EFRP therefore favours option 1. Adequate information provision from IORPs to supervisors is of the utmost importance for identifying risks and pre-empting or correcting them and for preserving confidence in the system. The EFRP would point to the difficulties, however, of harmonising information provision requirements. Due account should be taken of the specificities of national pension systems and the powers and traditions of national supervisory agencies The EFRP would point to the different risk-mitigating mechanisms that exist within many pension funds: the role of trade unions and employers' representatives on IORP boards are an important supervisory role. Members protection, which EIOPA recognises as one of the main goals of	

	information provision (28.3.10), is thus provided by specific mechanisms and EFRP therefore feels that it would not be productive to impose additional administrative and financial burdens on IORPs in this field, and to equate second-pillar pension provision with insurance products or third-pillar pension provision. Article 13 of the current IORP Directive already provides for an adequate information provision arrangement. The EFRP agrees with paragraph 23.3.11 that there is a risk of employers becoming unwilling to provide pensions if the costs of providing pensions goes up. In any case, should new rules be adopted in this area, the principle of proportionality should be respected and cost implications should be taken into account. Implementing measures made possible through a small revision of Article 13 of the IORP Directive could allow the supervisors to address the most important information gaps in Member States. In this respect, the OPC could be asked to investigate whether in any of the Member States any major gaps in information provision exist, and the Commission could subsequently take action to remedy these. The EFRP is willing to work with the OPC, EIOPA and the Commission to share its expertise and to gather information in this area.	
90.	For the reasons above, EFRP would welcome the introduction of a KIID-like document for DC schemes.	
91.	The EFRP believes that, for DB schemes, requirements in the current IORP Directive are sufficient and that no additional information is needed.	
92.	The introduction of a KIID-like document for DC schemes could be useful. Its objective is to increase the understanding of members of pension accrual in the DC scheme, its functioning and the risks. The KIID-like document should be adapted to the nature of the scheme (collective or individual) and to the specific Member State context. The EFRP believes that the quality and the usability of information are key in the design of the KIID-like document and more generally in information provision to members. Financial education efforts are essential and should be promoted in order to increase members' understanding. Since there is no competition between occupational pension schemes, the EFRP does not see added value in giving plan members information on the comparative "competitivity" of the scheme.	

	In this discussion therefore, it should be kept in mind that KIID documents were designed for investment products, whereas occupational pensions, are not "products". In addition, the EFRP believes that information requirements towards members should not be more onerous for IORPs than for insurance companies towards their clients. New European rules should not preclude Member States from maintaining existing, higher standards. Where the social partners have responsibilities in relation to the form or content of information provided to members in the KIID-like document or otherwise, their role should not be impacted by new rules. The EFRP believes that it will be difficult to draft a common European format for a pre-enrolment document and annual benefit statement, because of the differences in the members states' pension schemes and the specific information requirements based on national SLL. The implementation of the principles regarding information requirements as provided in the current IORP Directive can best be decided upon at a Member State level, as is the case today.	
93.	The EFRP believes that the risk ranking should change with the time horizon and performance scenarios should vary for different asset allocations, allowing for a risk premium for equity-oriented investment options. It should in any event be clear that this information does not contain any guarantees as to risk and/or performance.	
94.	The EFRP supports the idea of a personalised annual statement providing members with a good-quality, useful information on accrued rights, fees and possible expected benefits. This information could be presented in a uniform fashion but should also take into account national and scheme-specific circumstances (e.g. liability for disclosure of information) as well as cost implications for IORPs. There could be some harmonised common features, such as contributions paid in, investment returns, charges and expected benefits..	
95.	The EFRP supports the idea of improving information requirements. Where there are broad similarities between schemes and there is a high degree of commonality between them, it could make sense to harmonise in order to achieve some degree of comparability between schemes for members. The EFRP agrees with the EIOPA statement in 29.2.79 that Articles 51-56 from Solvency II should	

	not apply to IORPs.	
96.	The EFRP agrees with the preliminary impact assessment.	