

**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:

**National Association of Pension Funds (NAPF)**

Contact: James Walsh, Senior Policy Adviser, Workplace Pensions

NAPF, 138 Cheapside, London, EC2V 6AE, United Kingdom

Tel: 0044 (0)207 601 1720

[www.napf.co.uk](http://www.napf.co.uk)

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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

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<b>Question</b>	<b>Comment</b>	
General comment	<p><b>About the NAPF</b></p> <p>The National Association of Pension Funds is the UK’s leading voice for workplace pensions. Our members operate 1,200 pension schemes. They provide retirement income for nearly 15 million people and have almost €950 billion of assets under management. Our membership also includes over 400 providers of essential advice and services to the pensions sector. This includes accounting firms, solicitors, fund managers, consultants and actuaries.</p> <p>The NAPF is also a founder member of the European Federation for Retirement Provision (EFRP).</p> <p><b>NAPF’s approach to the IORP Directive review</b></p> <p>Europe is facing a retirement crisis. People are living longer and the challenges of saving for retirement are becoming more acute. 60 per cent of EU citizens do not have any form of workplace pension provision, and many EU citizens are on a collision course with a poor old age.</p> <p>It is against this background that the NAPF supports the objectives, first set out in the European Commission’s July 2010 Green Paper, of improving the security, adequacy and sustainability of the EU’s pension systems. We need a pensions environment that supports and encourages good pension saving.</p> <p>Although pensions policy remains a national competence, there are a number of areas where the EU can add value. But these EU interventions should be based on high-level principles, with detailed implementation to be determined by Member States.</p> <p>The areas in which the EU can add value lie particularly in areas such as governance, transparency</p>	

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and communications, and these should be the focus for EIOPA and the EC. Examples would include a number of the measures set out in the draft advice:

- proposals to strengthen the governance of defined contribution schemes in order to ensure that members' interests are well protected;
- proposals to improve communication to members – in both defined contribution and defined benefit schemes;
- proposals to strengthen the Directive with general principles on the supervision of IORPs; and
- use of the Own Risk and Solvency Assessment (ORSA) to improve qualitative assessment of governance standards and procedures.

However, the NAPF is very concerned that some of the key proposals in the present review – particularly the new approach to pension scheme funding, would undermine pension provision and damage the economy.

**Scrutiny of the case for a new Directive**

With this in mind, EIOPA needs to examine the case for a wholesale review of the IORP Directive very carefully indeed. Most elements of the existing Directive and national pensions legislation work well, so EU policy-makers will need to demonstrate where improvements can be made.

The Commission should be challenged to substantiate its assertion that the current form of the IORP Directive is a key barrier to the growth of cross-border pension schemes. Far more rigorous analysis

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and evidence is required if this point is to be used as justification for new legislation. EIOPA should stress that there are far more significant barriers to cross-border pension provision, such as differences between Member States' tax regimes.

In any case, EIOPA's own figures show that the number of such schemes is rising - from 78 to 84 in the past year - an 8 per cent increase.

EIOPA should also advise the Commission that, if it feels a new IORP Directive is absolutely necessary, then it should cover only Pillar II and Pillar III issues: governance and transparency respectively. It should not cover Pillar I-type funding issues, as this would generate major risks to pension schemes and their sponsoring employers, potentially undermining the security of workers' pension benefits, as explained later in this submission.

**Subsidiarity**

Any review of the IORP Directive should respect the Lisbon Treaty's requirements on subsidiarity. Pensions policy remains a Member State competence, except insofar as the Internal Market is concerned. The NAPF would urge EU policy-makers to ensure that measures intended to promote labour mobility across the EU do not disrupt the national-level regulatory systems that have been developed to suit each Member State's pattern of pension provision.

**Contractionary impact on the economy**

Although EIOPA has been asked to provide a purely technical response, the NAPF strongly urges all EU policy-makers involved in this review to consider the potential *economic* impact of a revised IORP Directive. At a time when the EC is engaged on tackling the Eurozone crisis and advancing the

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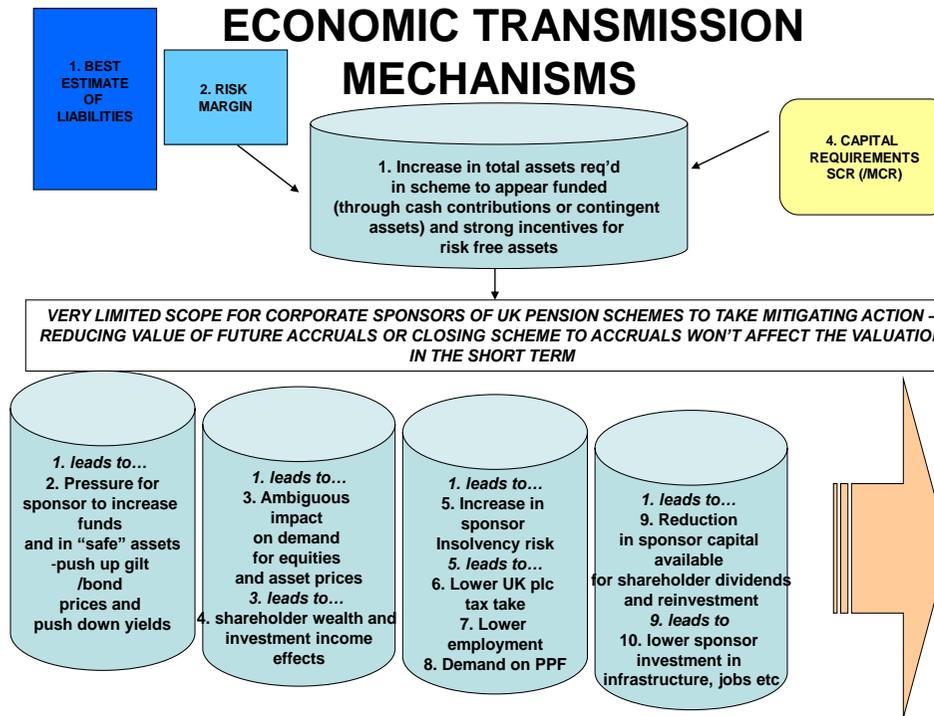
'Europe 2020' growth agenda, it would be unwise to adopt policies that could undermine corporate investment and job creation.<sup>1</sup>

The NAPF's research indicates that a new IORP Directive constructed along the lines envisaged in EIOPA's draft response would have a significant contractionary impact on the EU economy.

The graphics below illustrate the NAPF's concerns about the economic 'transmission mechanisms' which, we fear, would lead to damaging impacts on the EU economy.

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<sup>1</sup> The Europe 2020 Growth Strategy includes targets for 75% of 20-64 year-olds to be employed (68.6% in 2010) and for 3% of the EU's GDP to be invested in R&D / innovation (2% in 2010).



**CONTRACTIONARY CYCLE FOR EU ECONOMY**

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... ON CORPORATE SPONSORS

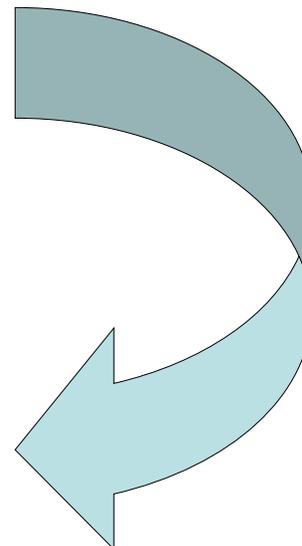
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... ON GOVERNMENT SPENDING

- REDUCED CORPORATE TAX TAKE
- HIGHER BENEFIT PAYMENTS
- PRESSURE ON PENSION PROTECTION FUND – INCREASES IN RISK BASED LEVY?

...ON SCHEMES AND PENSIONS

- INCREASED DB SCHEME CLOSURES
- REDUCE FUTURE PENSION BENEFITS – HIGHER FUTURE BENEFITS AND LOWER FUTURE TAX TAKE



**Negative impact on sponsor support for IORPs**

The NAPF shares the EC's objective of safer pension provision. However, the research presented in this submission shows that the 'holistic balance sheet' approach proposed by EIOPA would dramatically increase the cost of providing DB pensions.

- Research across a sample of NAPF member pension schemes indicates that just one of the

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innovations envisaged by the 'holistic balance sheet' – the shift to valuing Technical Provisions on a risk-free basis in order to obtain the 'best estimate of liabilities' – would increase Technical provisions by 27%.<sup>2</sup> This would equate to a €337 billion increase in scheme funding requirements.

- This very significant increase in funding requirements would have a number of consequences:
  - The extra funding demands on sponsoring employers would weaken these companies, increasing their insolvency risk and undermining their credit ratings. The 'sponsor covenant' would be weaker.
  - Sponsoring employers would have less money available for investment and job creation.
  - In order to match their risk-free liabilities, pension funds would shift investments out of equities and other return-seeking assets and into bonds and other risk-free investments. The result – again – would be less capital available for investment.
  - Employers would be forced to reduce or cease providing pension benefits to their employees, resulting in less generous benefits for scheme members. We would see a further shift from defined benefit to defined contribution pensions, creating a system in which members have a greater exposure to risks. So a Solvency II-style regime might actually *undermine* pensions security, as well as *reducing adequacy* – contrary to the Commission's objectives as set out in the July 2010 Green Paper *Towards Adequate, Sustainable and Safe European Pensions Systems*.

<sup>2</sup> Average increase across a sample of NAPF member pension schemes. See answer to Q.12 for detail.

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**Solvency II-based approach inappropriate for IORPs**

Although EIOPA has been asked to answer relatively narrow questions about the incorporation of elements of the Solvency II Directive into the IORP Directive, this NAPF submission urges EIOPA to question the EC's assumption that this approach is appropriate for IORPs.

- Pensions are fundamentally different from insurance. Unlike insurance products, pensions are paid over the long term in a relatively predictable manner. So the NAPF does not share EIOPA's view, as in para 2.6.2 of the consultation paper, that 'Differences in approach between the two sectors will need to be justified.' On the contrary, the NAPF argues it is the assumption that the *same* approach should be employed that should be justified.
- There are very diverse systems and traditions of pension provision across EU Member States. Designing a more harmonised regulatory system would not only be almost impossible, it would also be undesirable and costly. These extra costs would be passed to members.
- Policy-makers should recognise that workplace pension funds have weathered the financial storm well and have proved to be resilient. Security should not be seen as being synonymous only with solvency; governance also has a crucial role to play.
- It would be inappropriate to apply a Solvency II-style regime to pension funds in the UK, where members' benefits are already strongly protected by the employer covenant, by the work of the Pension Regulator and by the Pension Protection Fund.
- Unlike insurance companies, IORPs are run on a not-for-profit basis.

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	<p><b>Impact assessment</b></p> <p>This review of the IORP Directive raises complex issues and could have an impact on EU pension provision for many generations to come. It is imperative that the policy-making process is thorough and carefully considered.</p> <p>The NAPF is very concerned that the review has been allowed to develop to the current, very detailed, level without any accompanying impact assessment. Although EIOPA has now asked the <i>Group Consultatif Actuariel Europeen</i> to contribute to the impact assessment work, it appears that this work will not be concluded until relatively late in the policy-making process.</p> <p>The NAPF would suggest that impact assessment should be an integral part of the policy development process. The assessment should be drafted and expanded alongside advice on the new Directive, so that it can inform high-quality policy-making.</p> <p>EIOPA and the European Commission should also take time to get the detail right. The current – very short – consultation period does not indicate the necessary commitment to a careful consideration of all the issues.</p>	
1.	<p><b>SCOPE</b></p> <p><b>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?</b></p> <p>EIOPA has identified the full range of options for the future scope of the IORP Directive.</p> <p>We recognise that the pensions landscape has changed in at least two important respects – the</p>	

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	<p>growth of DC pensions and the advent of funded occupational pension provision in the Central and Eastern European Member States.</p> <p>However, these changes do not automatically mean that a new Directive is required, so Option 1 (leave the Directive unchanged) must remain on the table.</p> <p>EIOPA should also advise the Commission to ensure that its policy-making is correctly sequenced. The first task – and one that should be completed before any changes to the scope of the IORP Directive – is for DG Employment to finish its review of Regulation 883/2004 (on posted workers), which has a major impact on which schemes are defined as social security schemes.</p>	
2.	<p><b>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</b></p> <p>No – NAPF sees no further options that should be considered.</p>	
3.	<p><b>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</b></p> <p>No – NAPF sees no further options that should be considered.</p>	
4.	<p><b>Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need</b></p>	

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	<b>further attention?</b>	
5.	<p><b>DEFINITION OF CROSS-BORDER ACTIVITY</b></p> <p><b>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</b></p> <p>EIOPA's response should start by urging the EC to identify clear evidence of where the definition has obstructed cross-border pension provision.</p> <p>The response should also point out that the real barriers to cross-border pensions lie in tax and social security systems, not in pensions legislation. Furthermore, the low number of cross-border schemes does not reflect inadequate legislation; it reflects a lack of demand. Most occupational pension schemes have no ambition to provide pensions in other Member States.</p> <p>The EC should first conduct research to establish the <i>potential</i> number of cross-border schemes, based on the number of truly multi-national companies operating across the Internal Market. This work should recognise that many multi-nationals also operate beyond the borders of the EU.</p>	
6.	<p><b>RING-FENCING</b></p> <p><b>What is the view of stakeholders on the proposed principles of ring-fencing? Are the principles responding to the concerns expressed in the CfA?</b></p>	

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	<p>The NAPF agrees with the EC and EIOPA on the importance of ensuring a clear and robust legal separation between sponsoring undertakings and IORPs.</p> <p>However, this protection is already provided by Article 8 of the current IORP Directive. In the UK, this legislative requirement is robustly supported by the role of the Pensions Regulator, which would intervene if a sponsoring employer were to breach these clear requirements. The NAPF's view is that decisions on ring-fencing should continue to be left to Member States, subject to the high-level requirements of the current Article 8.</p> <p>The NAPF does not, therefore, consider that there is a case for adding to the current IORP Directive's requirements on ring-fencing in general. We do not see that an additional statement of general principles would strengthen protection in any practical way.</p>	
7.	<p><b>How do stakeholders evaluate the positive and negative impacts of the introduction of the proposed principles of ring-fencing?</b></p> <p>The NAPF agrees with the EC and EIOPA on the importance of ensuring a clear and robust legal separation between sponsoring undertakings and IORPs.</p> <p>However, this protection is already provided by Article 8 of the current IORP Directive. In the UK, this legislative requirement is robustly supported by the role of the Pensions Regulator, which would intervene if a sponsoring employer were to breach these clear requirements. The NAPF's view is that decisions on ring-fencing should continue to be left to Mmember States, subject to the high-level requirements of the current Article 8.</p>	

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	The NAPF does not, therefore, consider that there is a case for adding to the current IORP Directive's requirements on ring-fencing in general. We do not see that an additional statement of general principles would strengthen protection in any practical way.	
8.	<p><b>What is the view of stakeholders on making ring-fencing obligatory in case of cross-border activity? Should the Member State be obliged to introduce such rules or only in the cases where investment rules are not compatible?</b></p> <p>The NAPF recognises that the situation is more complex in relation to cross-border schemes. Here the NAPF favours Option One – allowing 'Member States to decide to impose the application of ring-fencing measures'. This will allow some flexibility for national-level supervisory authorities to advise domestic policy-makers on how existing domestic regulations can be adapted to ensure robust protection for cross-border schemes.</p>	
9.	<p><b>What is the view of stakeholders on the introduction of privilege rules? Should the Member State be obliged to introduce such rules? If not, why not? If yes, why?</b></p> <p>The NAPF agrees that it is essential for members of pension schemes to be well protected in the event of liquidation of an IORP.</p> <p>However, privilege rules should be a matter for Member States, which are best placed to take account of other protections provided by their regulatory frameworks.</p> <p>In the UK, for example, important contributions to pensions security are made by the Pension</p>	

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	<p>Protection Fund and by the Pensions Regulator’s power to impose Financial Support Directions on employers who do not support their company pension schemes. These factors should be taken into account when determining how privilege rules should be framed.</p>	
<p>10.</p>	<p><b>PRUDENTIAL REGULATION AND SOCIAL AND LABOUR LAW</b></p> <p><b>Do stakeholders agree with the analysis of the options as laid out in this advice, including the preference for option 2?</b></p> <p>The NAPF acknowledges that there may be a case for a clearer distinction between prudential regulation and social / labour law, in order to clarify the boundaries of each regulator’s activities. But this should not be allowed to generate extra regulatory burdens.</p> <p>In the interests of evidence-based policy-making, EIOPA should ask the EC to demonstrate that there is a demand or need for a change in the law in this area. EIOPA should also press the EC to show how a change in the law would strengthen cross-border pension provision.</p>	
<p>11.</p>	<p><b>How would you assess the impact of option 2?</b></p> <p>In the interests of evidence-based policy-making, EIOPA should ask the EC to demonstrate that there is a demand or need for a change in the law in this area. EIOPA should also press the EC to show how a change in the law would strengthen cross-border pension provision.</p>	

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12.

**QUANTITATIVE REQUIREMENTS**

**What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?**

The NAPF does not support the holistic balance sheet proposal. With such a diversity of pension systems across the EU's 27 Member States, it is impossible – and undesirable – to find a single regulatory system that would work well in every Member State.

It would be better to retain the high-level framework provided by the current IORP Directive, which allows Member States – as intended under the Subsidiarity rule that applies to pensions policy – to develop funding regimes that suit their own patterns of pension provision.

**Existing system works**

The UK already has a robust system of pension scheme funding that provides strong protection for members' benefits. The UK's 'scheme specific funding regime', thoroughly reviewed and overhauled in 2005, is now tried and tested. It helped IORPs to survive the recent financial crisis – effectively a major stress test of regulatory systems. And it is flexible enough to recognise the circumstances of individual schemes while still ensuring that members' benefits are safeguarded.

The NAPF sees no need to replace this framework with a new, untested system that would introduce unknown risks and uncertainties.

An alternative might be to place greater emphasis on the use of Own Risk and Solvency Assessments (ORSAs), which could provide a more flexible, qualitative approach to assessing pensions security.

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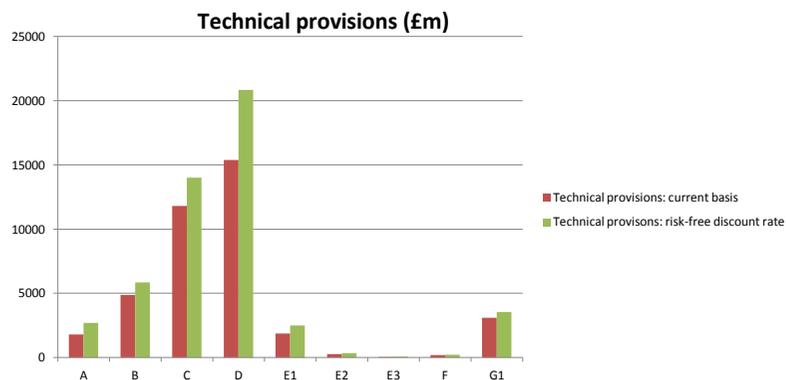
**Destabilising impact on scheme funding levels**

Although the consultation paper gives little detail on how important components of the holistic balance sheet would be valued (eg, the sponsor covenant and pension protection guarantees), it seems almost certain that the new approach would dramatically raise funding requirements in a manner that would undermine pension provision, rather than strengthen it.

The NAPF's research across a sample of our member pension schemes (summarised in the graphic below) indicates that the likely switch to the use of a risk-free discount rate to value the 'best estimate of liabilities' would increase technical provisions by an average of around 27%. This equates to an *increase in technical provisions across all UK DB schemes of €337 bn.*

Additional components, such as the 'risk buffer' and 'solvency capital requirement' would drive these figures even higher, and the NAPF's case for excluding these elements is set out in our answers to Q.18 and Q.38.

**Impact of risk-free discount rate  
on pension scheme funding**  
**Summary: *schemes A-G combined***



- Increases in technical provisions range from **14% to 50%**.
- Overall increase = **27.1%**.

An increase in scheme funding requirements on this scale would have damaging consequences.

- *Weaker sponsor covenant.* the sponsoring employer would be placed in a weaker position, needing to find extra money to fund bigger contributions or recovery contributions into the pension fund. This would increase the company's insolvency risk, thereby undermining the covenant. This would be a bad outcome for the scheme's members.

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- *More scheme closures and more risks for members.* The extra expense of running the company pension scheme would inevitably force more employers to reduce or cease providing pension benefits to their employees, resulting in less generous benefits for scheme members. We would see further shift from defined benefit to defined contribution pensions, creating a system in which members have a greater exposure to risks. So a Solvency II-style regime might actually *undermine* pensions security, as well as reducing adequacy – contrary to the Commission’s objectives as set out in the July 2010 Green Paper *Towards Adequate, Sustainable and Safe European Pensions Systems*.

EIOPA’s proposals would also increase the complexity involved in assessing Technical Provisions, thereby increasing IORPs’ actuarial costs.

**Contractionary impact on EU economy**

There would be a number of negative impacts on the economy that would make it more difficult for the EC to achieve the targets for job creation and investment set in the ‘Europe 2020 growth strategy’.

- *Less corporate investment.* If sponsor companies have to find more money for pension contributions, then they will have less available for investment and job creation.
- *Lower company share prices / increased insolvency ratings.* The prospect of increased pension burdens on sponsoring companies would drive down their share prices and drive up their insolvency ratings.
- *Less investment in equities.* IORPs like to match their assets to their liabilities. The use of risk-

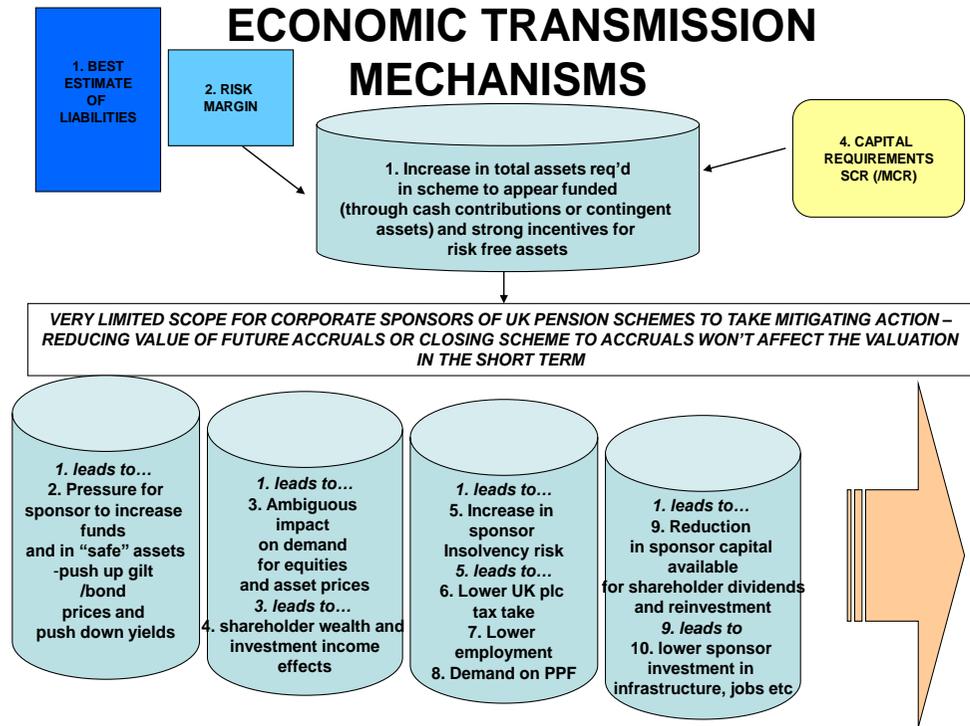
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free discount rates for calculation of liabilities would incentivise IORPs to shift (even more than at present) away from investment in return-seeking asset classes such as equities and into risk-free or low-risk assets such as government or corporate bonds. This would – again – mean less money available for equity investment in the EU economy. This effect would undermine the effectiveness of the current rounds of Quantitative Easing.

- *Lower tax take.* Impaired corporate performance would mean a lower tax take for the Government. There is also a risk that lower employment levels would drive welfare spending higher than expected.
- *Gilt yields reduced.* Although increased demand would push gilt prices up, yields would be reduced, undermining an important income stream for IORPs.

## ECONOMIC TRANSMISSION MECHANISMS



**CONTRACTIONARY CYCLE FOR EU ECONOMY**

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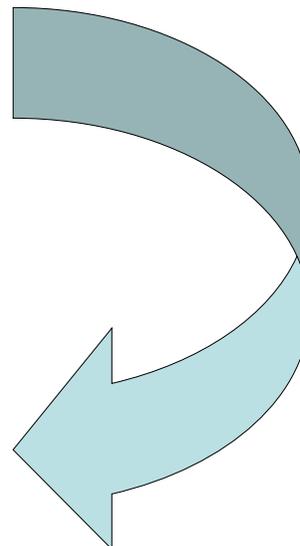
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**Risks of Level 2 regulation**

Although the holistic balance sheet would give some credit for the sponsor covenant and pension protection guarantees, the consultation paper provides no detail on how these components would be valued. In the absence of this detail, the NAPF is unable to rely with any confidence on these components mitigating the very damaging effects of the components that would dramatically raise scheme funding requirements, such as the 'best estimate of liabilities' and the 'risk buffer'.

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The NAPF would strongly oppose any move to leave this clarification to level 2 regulation; it is essential that such important issues should be clearly defined in the Directive itself.

**Retain distinctions between different kinds of IORP**

One of the drivers for the holistic balance sheet approach is to develop a single regime that could be applied to all kinds of IORP, including those where the sponsor provides guarantees as well as those where the risks fall squarely on the scheme itself (Article 17.1 IORPs).

The NAPF does not agree that there is merit in applying a single regulatory regime to these different kinds of IORPs, not least because of the disruption for sponsor-backed IORPs and the EU economy described in the paragraphs above.

13.

**VALUATION OF ASSETS, LIABILITIES AND TECHNICAL PROVISIONS**

**Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?**

EIOPA should define what 'market consistent' means in the context of the current consultation. As explained in our answer to Q16 below, it should not equate to the 'mark to market' approach employed in IAS19, which has undermined long-term pension provision.

The NAPF would suggest that 'market consistent' is best defined at Member State level by national regulators.

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14.	<p><b>What is the stakeholders' view on the two options regarding the starting principle for valuing liabilities? Do stakeholders agree that such a principle for IORPs should contain no reference to transfer value?</b></p> <p>The valuation of liabilities on a market-consistent basis is inappropriate for IORPs.</p> <p>The long-term nature of IORPs means that they should be able to make long-term assumptions about valuations in order to help them to capture returns over the long term.</p> <p>With these points in mind, the NAPF prefers Option 1.</p>	
15.	<p><b>Do stakeholders agree that the own credit standing of IORPs should not be taken into account when valuing liabilities?</b></p> <p>The NAPF does not support this approach. The approach to valuing liabilities should be sufficiently flexible to take account of the full range of factors that have a bearing on the likelihood that liabilities will be met.</p> <p>The IORP's own credit standing is clearly an important factor in this assessment, and it should be possible for IORPs with a strong credit standing to factor this into the assumptions used for valuing liabilities.</p>	
16.	<p><b>What is the stakeholders' view on inserting a recital in the IORP Directive saying that</b></p>	

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**supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?**

NAPF would strongly oppose changing valuation rules in order to establish consistency with the accounting standards for pension schemes' sponsoring organisations. Accounting standards and supervisory valuation standards for funding purposes have totally different purposes and are applicable to different institutions. Significantly, the pension scheme accounting standard (IAS 26 'Accounting and Reporting by Retirement Benefit Plans') does not require pension schemes to account for the employer's pensions obligation in their financial reports.

IAS 19 (Employee Benefits) provides for a measure of the scheme sponsor (employer's) liability for post-employment benefits at a single point of time, consistent with the employer's other assets and liabilities. The purpose of the accounting figures is to provide users of accounts with a basis for economic decisions in relation to the company.

Accounting standards do not cater well for long-term liabilities. The use of volatile market prices to measure assets and of a 'market consistent' discount rate to measure liabilities leads to a volatility in the measurement of pension liabilities, and of scheme surpluses and deficits, that does not reflect the reality of a pensions obligation that changes only gradually over time, in line with scheme demographics. Volatility has encouraged the closure of schemes that are in reality perfectly viable, to the detriment of millions of workers who will find their incomes in retirement greatly reduced, and the adoption of inappropriate investment strategies that have increased the cost of pension provision.

A funding valuation is intended to provide a measure of the pensions liability consistent with the assets held to provide for it. Its purpose is to provide a measure of the adequacy of the assets provide for the employer's pensions obligations as they become due.

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	<p>There is no reason why the accounting and funding valuations should be the same or even similar.</p>	
<p>17.</p>	<p><b>Do stakeholders agree with the EIOPA view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive? What is the stakeholders' view on the two proposed options regarding Article 76(3)?</b></p> <p>The meaning of Article 76(1) – that IORPs should establish technical provisions with regard to all their obligations – is already covered in Article 15(1) of the IORP Directive. There is, therefore, no need for any change.</p> <p>EIOPA's suggestion that Article 76(4) should be incorporated (minus the reference to 'prudent'), so that it requires technical provisions to be calculated in a 'reliable and objective' manner, appears reasonable, although the it is difficult to see what practical benefit it would deliver. The NAPF argues that this should be substantiated first.</p> <p>Article 76(5) is a consequential drafting matter – no comment needed.</p>	
<p>18.</p>	<p><b>What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?</b></p> <p>NAPF does not accept the need for a separate risk margin.</p>	

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	<p>The concept of a separate risk margin is designed for insurance, where one-off shocks can have a major and immediate destabilising impact.</p> <p>Unlike insurance products, pensions are paid over the long term in a relatively predictable manner. IORPs respond to shocks completely differently by adjusting funding levels over the medium and long term. So it is wrong to assume that a regulatory framework designed for insurance should apply to pensions.</p> <p>EIOPA's proposal for a risk-free approach to discounting liabilities already injects a large measure of extra prudence into the IORP funding regime. A further risk margin would pile prudence upon prudence.</p>	
19.	<p><b>Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions?</b></p> <p>The consultation paper gives a good assessment of the arguments for and against factoring some recognition of conditional and discretionary benefits into the calculation of technical provisions.</p> <p>The NAPF's view is that only current benefits should be taken into account – without any future accrual.</p> <p>If future accrual were to be taken into account, then the task would be very dependent on the assumptions chosen; the resulting figures for technical provisions would be too unreliable to form a sound basis for scheme funding.</p>	

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20.	<b>Do stakeholders agree that the best estimate of IORPs should be calculated gross without deduction of amount recoverable from reinsurance contracts and special purpose vehicles?</b>	
21.	<p><b>What is the stakeholders' view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative impacts)?</b></p> <p>NAPF is very concerned that the discussion paper presents only two options, both involving the use of risk-free interest rates. The paper should also present an option based on the <i>status quo</i>.</p> <p>The diversity of pension schemes across the EU means that a wide range of discount rates is used. These reflect individual schemes' circumstances. It is wrong to impose a 'two sizes fit all' model.</p> <p><b>Option 2 – risk-free discount rate</b></p> <p>The use of a risk-free discount rate is inappropriate for long-term pension provision, not least if we wish to encourage pension schemes to invest at least partly in risk-seeking, higher return assets such as equities.</p> <p>The NAPF's research across a sample of our member pension schemes indicates that the likely switch to the use of a risk-free discount rate to value the 'best estimate of liabilities' would increase technical provisions by an average of around 27%. This equates to an <i>increase in technical provisions across all UK DB schemes of €337 bn</i>.</p> <p>Additional components, such as the 'risk buffer' and 'solvency capital requirement' would drive these</p>	

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	<p>figures even higher.</p> <p>As discussed above under Question 12, this major increase in technical provisions would have damaging effects for members, sponsoring companies and the wider economy.</p> <p><b>Option 3 – Level A and Level B technical provisions</b></p> <p>The proposal for a two-level approach to valuing technical provisions could provide a useful methodology.</p> <p>However, the consultation paper gives no detail on how the ‘fixed, but not risk-free, interest rate curve’ to be employed for the ‘Level B’ calculation is to be chosen. Instead, this is to be left to level 2 implementing measures.</p> <p>The paper also gives no explanation of how and when the two alternative measures would be used. Again, this is unacceptable – especially given the importance of the discount rate issue in pension scheme funding.</p> <p>Further detail and explanation is needed on how the risk-free rate would be determined.</p>	
22.	<p><b>Do stakeholders agree that expenses incurred by the IORP in servicing accrued pension right should be taken into account in technical provisions as introduced by Article 78 of Solvency II?</b></p> <p>Yes – the NAPF agrees with this proposal.</p>	

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23.	<p><b>Do the stakeholders agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II? Do stakeholders find that discretionary benefits should be included in the best estimate of technical provisions? Is the Solvency II article on surplus funds useful for IORPs in this respect?</b></p> <p>The consultation paper gives a good assessment of the arguments for and against factoring some recognition of conditional and discretionary benefits into the calculation of technical provisions.</p>	
24.	<p><b>Do stakeholders agree with EIOPA’s view of introducing Article 79 of Solvency II with appropriate amendments into a revised IORP Directive regarding allowances for financial guarantees and contractual options when establishing technical provisions?</b></p>	
25.	<p><b>Do stakeholders agree that it would be useful to introduce Article 80 of Solvency II with appropriate amendments into a revised IORP Directive regarding appropriate segmentation of risk groups when calculating technical provisions?</b></p> <p>The NAPF agrees with the statement in para 9.3.145 of the consultation paper – that the text in Article 15 of the current IORP Directive adequately covers the requirement for IORPs to take account of the nature of all the schemes under their operation. There is no need for additional text.</p>	
26.	<p><b>What is the view of stakeholders on the two options regarding recoverables from</b></p>	

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	<p><b>reinsurance contracts and special purpose vehicles as introduced by Article 81 of Solvency II?</b></p> <p>These provisions are specifically designed for insurers. There is no need to import them into the IORP Directive.</p>	
27.	<p><b>Do stakeholders agree that it would be useful to introduce Article 82 of Solvency II with appropriate amendments into a revised IORP Directive regarding the availability of data and the use of approximations in the calculation of technical provisions?</b></p> <p>The NAPF would agree with the comment in para 9.3.157: this is already covered by the requirements of the current Article 15 for certification by an actuary in line with national level standards.</p> <p>The point is also covered by the Prudent Person Principle – a key element of the UK’s Pensions Act 1995.</p>	
28.	<p><b>Do stakeholders believe that it would be useful to introduce Article 83 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for assumptions to calculate technical provisions to be regularly compared against experience and adjustments made when appropriate?</b></p> <p>Again, Article 15 already covers this issue. The proposed insertion of Article 83 from Solvency II would deliver no practical extra benefit.</p>	

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29.	<p><b>Do stakeholders agree that it would be useful to introduce Article 84 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions?</b></p> <p>This is already covered by Article 14 of the IORP Directive. There is no need for any change.</p>	
30.	<p><b>Do stakeholders agree that it would be useful to introduce Article 85 of Solvency II with appropriate amendments into a revised IORP Directive regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law?</b></p> <p>The existing Article 14 gives national supervisory authorities wide-ranging powers to intervene when a scheme's technical provisions are unsatisfactory. Incorporating Article 85 of Solvency II would – again – deliver no new advantage.</p>	
31.	<p><b>Do stakeholders agree that a new IORP Directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II?</b></p> <p>Since the Treaty of Lisbon, the EU has required all key political issues to be set out in Directives, rather than in level 2 regulations. EIOPA should advise the EC to respect this requirement in its review of the IORP Directive.</p>	

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The NAPF would also argue that EIOPA and the EC should learn from the difficulties that the 'level 2' approach is now generating. The implementation of Solvency II is proving time-consuming and problematic, partly because important questions were left to be decided at level 2.

The NAPF would strongly advise EIOPA and the EC to ensure that all key issues are resolved at the level 1 stage. Not only does this make the policy-making process more accountable, it also provides greater clarity and certainty for IORPs and helps to avoid the problems that the insurance sector is now encountering.

32.

**Do stakeholders agree that individual Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive?**

Pension scheme funding remains a Member State competence.

The NAPF has already argued that maximum harmonisation is inappropriate for IORPs, due to the sheer variety of pension systems across EU Member States.

We do not, therefore, accept EIOPA's argument that Article 15(5) should be removed.

This Article plays an important role in giving national-level supervisors the power to take the measures they judge necessary to ensure that their IORPs are well funded. The NAPF is concerned that removing Article 15(5) would weaken protection for members, rather than strengthen it.

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33.	<p><b>What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?</b></p> <p>NAPF agrees that that all forms of sponsor support should be treated as assets and should be seen as risk-mitigating factors.</p> <p>The NAPF is concerned about the complexity and subjectivity that would be involved in valuing the sponsor covenant. A simpler approach should be taken: IORPs that have sponsor support should <i>not</i> be subject to the Solvency Capital Requirement.</p> <p>Although the NAPF is willing to offer the comments in the two paragraphs above, we must point out that EIOPA should not be proposing a major new concept such as this Solvency Capital Requirement until it knows how the SCR would operate in practice – including the issue of how sponsor covenant would be valued.</p>	
34.	<p><b>Do the stakeholders agree that Articles 87-99 of Solvency II on own funds should be applied to IORPs? What amendments, other than the ones suggested by EIOPA, should be made?</b></p>	
35.	<p><b>Do stakeholders agree that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive?</b></p>	

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36.	<p><b>What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?</b></p> <p>It would be impossible to recommend a single uniform security level for IORPs across Europe, as this would take no account of the extent to which other elements, such as Pillar I pensions, contribute to the security of retirement incomes.</p>	
37.	<p><b>Do the stakeholders agree that the confidence level should apply to a one-year time horizon?</b></p> <p>A confidence level is meaningless for IORPs.</p> <p>NAPF recommends that this proposal should not be taken forward.</p>	
38.	<p><b>What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?</b></p> <p>The NAPF does not see a need for a Solvency Capital Requirement in the case of IORPs. Although we share the EC's wish to ensure robust protection for members' benefits, the assumptions on which</p>	

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technical provisions are calculated are already designed to provide for the risks that IORPs and their sponsoring employers face. Adding a completely new element in addition to these tried and tested arrangements would simply pile prudence upon prudence – with the consequences described earlier in this response.

The NAPF notes that EIOPA acknowledge (in the 'negative impacts' listed after para 10.3.69) that the additional costs of the SCR could 'undermine the cost-efficiency of occupational retirement provision in the EU' and that there would be a 'risk of employers reducing occupational retirement provision (at least for future employees) in the EU'. The NAPF shares these important concerns and urges EIOPA to emphasise its warning to the EC about these risks.

We note that EIOPA also acknowledge the 'higher' and 'completely new' costs that sponsor-backed IORPs would face in calculating the SCR.

Although the Solvency Capital Requirement would be mitigated for UK defined benefit IORPs by values assigned to the sponsor covenant and Pension Protection Fund, details of how these two components will be calculated are to be left to level 2 regulations. Without this crucial information, it is impossible for the NAPF to assess how the SCR system would work in practice. (There is, of course, still no impact assessment from the EC or EIOPA.) This leads us to approach the SCR proposal with great caution.

Although the SCR will take account of the two mitigating factors identified above, it should also take account of further mitigating factors that contribute towards secure retirement incomes, including the level of pillar I (state) pensions.

An alternative to placing a specific value on the employer covenant would be simply to take it into

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	<p>account when considering the robustness of recovery plans.</p> <p>The NAPF remains of the view that the best guarantee of pensions security is to help pension schemes to be sustainable over the long term.</p>	
39.	<p><b>Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?</b></p> <p>As explained in answer to Q38 above, the NAPF's strong preference is not to impose the SCR at all.</p> <p>In any event, we believe that a one-year time horizon is totally inappropriate for IORPs. The core purpose of an IORP, as opposed to individual forms of provision, is to provide benefits that are equitable across generations by diversifying risks over membership and time. Measuring the performance of an IORP over a one-year horizon would rob it of the ability to carry out this function.</p>	
40.	<p><b>What is the stakeholders' view on imposing a minimum capital requirement (MCR) upon IORPs? What adjustments to the Solvency II rules are needed regarding the structure and frequency of the calculation?</b></p> <p>The NAPF is opposed (as explained in Q38) to the SCR. And without an SCR, there is, of course, no need for an MCR either. The NAPF is, therefore, opposed to both.</p>	
41.	<p><b>What is the stakeholders' view on the analysis regarding pension protection schemes? If</b></p>	

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**included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?**

The NAPF does not accept the case for the holistic balance sheet. But, if the EC decides to take the proposal forwards, then it should certainly recognise the role of pension protection schemes.

The NAPF would argue, in fact, that the existence of the sponsor covenant and Pension Protection Fund in the UK, together with other security mechanisms such as governance arrangements and the role of the Pensions Regulator, means that there is no need for an extra element in the form of a SCR.

42.

**Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?**

Defined contribution pension schemes already ensure that they can cope with unexpected costs arising from operational risks; the funds for these costs are covered as part of the contributions made by employees and employers. There is no need for a new capital requirement on DC schemes to cover these risks.

The UK's DC IORPs also benefit from:

- internal controls;
- audit requirements;

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	<p>- capital requirements that already apply to their providers and fund managers through the UCITs Directive.</p> <p>It would be better to focus on ensuring that all DC schemes have good governance arrangements to minimise the risk of operational failure.</p> <p>The NAPF, therefore, favours Option One – leave the IORP Directive unchanged.</p> <p>The NAPF is also concerned that the introduction of new capital requirements for trust-based DC IORPs would create an uneven playing field between trust-based and contract-based provision, thereby incentivising a shift towards contract-based schemes.</p>	
43.	<p><b>What is the stakeholders' view on the analysis regarding the duties of IORPs and the powers of supervisors in the case of deteriorating financial conditions as introduced by Article 136 and 141 of Solvency II?</b></p> <p>The NAPF agrees that IORPs should continually monitor their financial position and notify significant deteriorations (and how they intend to address them) to the supervisory authorities.</p> <p>However, these requirements are already adequately covered by Article 16.1 of the IORP Directive and by the 'Prudent Person Principle'. There is no need to import sections of Solvency II in order to cover this point.</p>	
44.	<p><b>What is the stakeholders' view on the analysis regarding the submission of recovery plans</b></p>	

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

The NAPF favours option one – retain the current flexible position on recovery periods.

Allowing IORPs to have longer recovery periods than insurance companies recognises the distinctive nature of pensions, which are paid out over the long-term in a largely predictable manner. It also recognises that, as long-term institutions, IORPs should be allowed to 'ride out' periods of poor economic and investment performance in the expectation that the resulting deficits will be eliminated as conditions improve over the medium term.

It is, of course, essential that recovery periods are approved by the national supervisor.

The NAPF is concerned that EIOPA's advice (at para 10.3.194) appears to envisage restricting recovery periods that bring IORPs back to the MCR level – (effectively the same as technical provisions) to a shorter timeframe than the 15 years mentioned in para 10.3.190. This would massively restrict sponsors' flexibility and would increase the risk of accelerated DB scheme closures explained in our answer to Q12 above.

However, the NAPF notes that EIOPA's advice on these points is unclear. This is a key area in which further consideration and explanation is required.

45.

**Do stakeholders agree that the IORP Directive should be extended with stipulations**

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	<p><b>introduced by Article 137 and 140 allowing supervisors to prohibit the free disposal of assets when IORPs do not comply with the capital requirements or the rules for establishing technical provisions?</b></p> <p>NAPF agrees that, in extreme cases, the regulator should be allowed to impose a prohibition on disposal of the IORP's assets.</p>	
46.	<p><b>Do stakeholders agree that it should be specified in the IORP Directive what constitutes a recovery plan as introduced by Article 142 of Solvency II? How should the contents differ from those of insurance companies?</b></p> <p>Article 142 is not appropriate for IORPs. Key parts of Article 142's requirements, such as estimates of management expenses and estimates of income and expenditure in respect of direct business, are not relevant for IORPs.</p> <p>Recovery plans should be based on projections for future years, showing the IORP's financial position, including benefits to be paid and expected contributions and returns.</p> <p>The recovery plan should also include the contribution policy and the indexation policy.</p>	
47.	<p><b>INVESTMENT RULES</b></p> <p><b>Do stakeholders believe that the prudent person principle is a sufficient basis for the investment of IORPs or is additional provision needed?</b></p>	

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	<p>The NAPF agrees that the prudent person principle is a good protection for IORP investments, and this is well covered in the existing IORP Directive text.</p> <p>We do not object in principle to EIOPA’s proposed amendments, which are already covered by the prudent person principle, but it is not clear that they would deliver any practical increase in protection.</p>	
48.	<p><b>Do stakeholders feel that Member States should have the option to impose limitations on investments in addition to those set out in the IORP Directive? What about host member states?</b></p> <p>The NAPF agrees with EIOPA’s advice that there is no need for a special investment restriction in these circumstances.</p> <p>In the UK, the regulatory regime for IORP investment in the plan sponsor has recently been revised to ensure it remains robust.</p> <p>These issues should be subject to the ‘Prudent Person Principle’.</p>	
49.	<p><b>To what extent do stakeholders believe the investment provisions of the Directive should differ between defined benefit and defined contribution pensions?</b></p> <p>There should be no differentiation in investment provisions between DB and DC pensions. In both</p>	

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	cases the prudent person principle should be the key requirement.	
50.	<p><b>Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?</b></p> <p>As in the previous answer, the prudent person principle is the key to securing good investment outcomes.</p>	
51.	<p><b>What is stakeholders' view of the current prohibition on borrowing in Article 18(2)?</b></p> <p>UK IORPs are already barred from borrowing.</p>	
52.	<p><b>OBJECTIVES AND PRO-CYCLICALITY</b></p> <p><b>What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour?</b></p> <p>The analysis is sensible. The NAPF agrees with EIOPA's advice that regulators should take account of the economic impact of their decisions – especially whether their actions would be pro-cyclical. It is important to acknowledge the valuable counter-cyclical role that IORPs can play in the economy due to their long-term investment horizons.</p> <p>The NAPF would urge EIOPA to take its advice to the next level by asking the EC to conduct an</p>	

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	<p>impact assessment to assess whether the proposed new IORP Directive would have a pro or counter-cyclical impact on the EU economy.</p> <p>The NAPF favours leaving the IORP Directive unchanged in this respect.</p>	
53.	<p><b>GENERAL PRINCIPLES OF SUPERVISION, SCOPE AND TRANSPARENCY AND ACCOUNTABILITY</b></p> <p><b>Do stakeholders agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability should also apply to IORPs?</b></p> <p>The NAPF agrees that Articles 29 and 31 of Solvency II could usefully be incorporated into the IORP Directive. However, the IORP Directive should continue to provide flexibility for national regulators to set rules that take account of the particular circumstances of their own pension systems.</p>	
54.	<p><b>Has EIOPA identified correctly those issues – need to enhance benefit security, differences between IORP and insurance supervision, and diversity of IORPs - where there should be differences between insurers and IORPs on supervision and transparency and accountability?</b></p> <p>The NAPF agrees that these are key differences between IORPs and insurers.</p> <p>Further differences include the involvement of social partners in pension provision (for example</p>	

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through trade union representatives serving as member-nominated trustees), the role of trustees in general, and – crucially – the close involvement and support of the employer as sponsor of the scheme.

Unlike insurance companies, IORPs are run on a not-for-profit basis.

Work-based pension funds are social protection vehicles, not financial services enterprises. Unlike insurers and other financial institutions, they do not compete with each other to offer pensions to the public at large.

There is a great diversity of pensions systems across Europe. Unlike other financial institutions whose ‘products’ are much more homogeneous (such as banks and insurance companies), work-based pensions vary considerably across Member States. The tax rules that shape pension provision are also set at member state level. These factors make a ‘one-size-fits-all’ solution to security impossible to deliver. Moreover, the diversity of EU pension systems should be seen as strength - one that has helped insulate both pension systems and national economies from systemic risk. So the objective should be to develop a system that is flexible enough to deliver effective security for scheme members in each Member State, rather than to harmonise pension systems across the EU.

55.

**GENERAL SUPERVISORY POWERS**

**Do stakeholders agree with the recommendation that supervisory authorities should have broadly the same powers to require IORPs to conduct stress tests as it has in respect of insurers?**

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	<p>The NAPF is not opposed in principle to giving EIOPA and national regulators powers to conduct stress tests of IORPs. However, it is vital that these tests do not add a major additional administrative or cost burden.</p> <p>NAPF urges EIOPA to conduct an impact assessment on this measure before including it in its final advice to the EC.</p>	
56.	<p><b>Do stakeholders agree with reinforcing the sanctions regime for IORPs?</b></p> <p>The NAPF agrees with EIOPA’s advice that there is still lack of research in this area. Until there is a clearer evidence basis – and a clearer understanding of how any sanctions would be implemented, the NAPF would oppose any policy initiative in this area.</p> <p>In any case, this area should remain a matter for Member States.</p>	
57.	<p><b>Should knowledge of the imposition of penalties be public or restricted?</b></p> <p>The NAPF would support making such penalties public. Transparency is vital for good pension provision.</p>	
58.	<p><b>Should host states be able to impose sanctions on IORPs without going through the home state?</b></p>	

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	<p>The NAPF does not agree with this proposal. National-level regulators are best placed to decide what sanctions would be most effective in raising standards in the IORPs that it supervises. Host nation regulators should only be allowed to initiate sanctions via the home supervisor.</p>	
<p>59.</p>	<p><b>SUPERVISORY REVIEW PROCESS AND CAPITAL ADD-ONS</b></p> <p><b>What is the view of stakeholders on whether the requirements for the supervisory review process for insurers should also apply to IORPs?</b></p> <p>The NAPF favours Option 3: allow Member State to determine the most suitable approaches to supervision for their IORPs.</p> <p>Many Member States, including the UK, already have robust regulatory oversight in place, supported by the existing Articles 13 and 14 of the IORP Directive.</p> <p>As explained throughout this response, Solvency II is the wrong starting point for initiatives to strengthen the security of pensions.</p>	
<p>60.</p>	<p><b>What is the view of stakeholders on whether the requirements for capital add ons for insurers should also apply to IORPs?</b></p> <p>It would be inappropriate to impose capital add-on requirements on IORPs similar to those applicable to insurers.</p>	

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61.	<p><b>SUPERVISION OF OUTSOURCED FUNCTIONS AND ACTIVITIES</b></p> <p><b>Do stakeholders agree that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs?</b></p> <p>Elements of article 38(1) of Solvency II could usefully be imported into the IORP Directive.</p> <p>There is, however, no added value in 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.</p> <p>Article 38(2) should not be applied to IORPs. Instead, the key principle should be that the IORP remains responsible for the activities it has outsourced; the IORP should be the first contact point.</p>	
62.	<p><b>What is the stakeholders` view on proposed changes to the definition of home state and rules on chain outsourcing?</b></p>	
63.	<p><b>GOVERNANCE</b></p> <p><b>Do stakeholders agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality?</b></p> <p>The NAPF agrees that the governance elements of Solvency II could reasonably be used as a basis for a new section of the IORP Directive. High standards of governance are vital for good retirement</p>	

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	<p>provision.</p> <p>Although the NAPF opposes the translation of Pillar I of Solvency II into the IORP Directive, we recognise that provisions from Pillars II and II could usefully be imported in order to strengthen protection for scheme members.</p> <p>Any new governance clause must allow for flexibility; the diversity of pension and governance systems at national level should be seen as a strength for the EU, not as a weakness. So the new IORP Directive should set high-level requirements for governance, allowing national supervisors to set detailed standards at Member State level.</p> <p>EIOPA should also point out that governance requirements must not impose burdensome requirements on IORPs. As EIOPA states at section 10.3.4, "A new supervisory system for IORPs shall not undermine the supply or the cost efficiency of occupational retirement provision in the EU"<sup>3</sup>. This is a further reason for a detailed impact assessment, which should take particular account of the potential impact on small pension schemes.</p>	
64.	<p><b>Has EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements?</b></p> <p>Yes, NAPF agrees that remuneration policy and member participation are areas of difference between IORPs and insurers; this should be reflected in any new rules.</p>	

<sup>3</sup> EIOPA, Draft response to the Call for Advice on the Review of the Directive 2003/41/EC, EIOPA-CP-11/001, p. 43

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Any new governance requirements should be subject to a full impact assessment.

65.

**FIT AND PROPER**

**Do stakeholders agree the introduction of the same fit and proper requirements for IORPs as were introduced for insurance and reinsurance undertakings in article 42 (1) of the Solvency II Framework Directive?**

The NAPF disagrees with EIOPA's draft recommendation that the 'fit and proper' definition in Article 42 of Solvency II should be copied across into the IORP Directive.

Article 42's requirement for 'professional qualifications' fails to take account of the approach to governance in the UK, where lay trustees play a major – and very effective – role in ensuring that members' interests are well protected. The UK's Pensions Act 2004 requires trustees to have knowledge and understanding of the law relating to pensions and trusts and the principles of funding and investment. They are also expected to be familiar with the scheme's deed, rules and other documents.

Article 42 would also fail to recognise the effective contribution to good pension scheme governance made by the Myners Principles for Occupational Pension Schemes, first published in the UK in 2001, which set a widely respected benchmark for good governance. The first principle, on 'Effective decision-making', is as follows:

'Decisions should be taken only by persons or organisations with the skills, information and

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resources necessary to take them effectively. Where trustees elect to take investment decisions, they must have sufficient expertise and appropriate training to be able to evaluate critically any advice they take.

'Trustees should ensure that they have sufficient in-house staff to support them in their investment responsibilities. Trustees should also be paid, unless there are specific reasons to the contrary.

'It is good practice for trustee boards to have an investment sub-committee to provide the appropriate focus.

'Trustees should assess whether they have the right set of skills, both individually and collectively, and the right structures and processes to carry out their role effectively. They should draw up a forward-looking business plan.

'We recognise that it is important to ensure all trustees have the necessary skills and knowledge, and this is why the NAPF runs training courses for trustees and strongly supports the Pensions Regulator's requirements on Trustee Knowledge and Understanding (TKU).'

66.

**Do stakeholders agree with the advice that:**

- a. The fit and proper requirements should apply at all times**
- b. There should be effective procedures and controls to enable supervisory authorities to assess fitness and propriety**

The NAPF agrees that fit and proper requirements should apply at all times and that there should be

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	procedures and controls to enable supervisory authorities to assess fitness and propriety.	
67.	<p><b>What powers should supervisory authorities have in the event that the fit and/or proper requirements are not fulfilled?</b></p> <p>National supervisors should be allowed to decide on the best approach to assessing the fitness and probity of IORP trustees.</p>	
68.	<p><b>RISK MANAGEMENT</b></p> <p><b>What is the view of stakeholders on the proposed principles of the revised IORP directive? How do stakeholders evaluate the positive and negative impact of the proposed risk management principles?</b></p> <p>The NAPF welcomes the account to be taken of the differences in risk management rules depending on the risk-sharing mechanism of the pension scheme. However, risk management should be principle-based rather than rule-based.</p> <p>NAPF also agrees that risk management systems should cover all risks, including risks that can occur in outsourced functions and activities.</p> <p>The principle of risk management must be applied in a proportionate and reasonable manner.</p> <p>As in the consultation paper, the NAPF also emphasises the need for an impact study to assess the</p>	

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	real impact of the new requirements.	
69.	<p><b>OWN RISK AND SOLVENCY ASSESSMENT</b></p> <p><b>Do you agree with EIOPA that ORSA is, in principle, suitable for IORPs? Please provide evidence/reasons supporting your view.</b></p> <p>The ORSA could provide a useful tool for conducting a qualitative assessment of governance standards and procedures in IORPs.</p> <p>However, the ORSA should be seen as an alternative to the holistic balance sheet, not as a complement or addition to it.</p> <p>The ORSA should take full account of the IORP's existing internal controls and should not be overly prescriptive.</p>	
70.	<b>What should be the scope of ORSA for IORPs where members bear all the risks? How do you assess the impact of introducing ORSA?</b>	
71.	<b>What is the stakeholders' view of the necessity to perform ORSA in the event that the holistic balance sheet approach is adopted?</b>	

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72.	<p><b>INTERNAL CONTROLS</b></p> <p><b>What is the view of the stakeholders on the proposed new explanatory text on the whistle-blowing obligation of the compliance function?</b></p> <p>The NAPF agrees that Member States should have the option to introduce whistle-blowing obligations as part of the compliance regime. This principle is already enshrined in the UK's Pensions Act 1995.</p>	
73.	<p><b>What is the view of the stakeholders on the proposed new explanatory text on the scope (the fact that the compliance function should include all legislation with an impact on the operations of an IORP)?</b></p>	
74.	<p><b>INTERNAL AUDIT</b></p> <p><b>Do stakeholders agree that the material requirements of internal audit in respect of insurers should also apply to IORPs, subject to proportionality and other changes?</b></p> <p>The NAPF disagrees with EIOPA that the introduction of an internal audit function in the revised IORP Directive would be beneficial and would advise against transposing Art. 43 of Directive 2009/138 into IORP II.</p> <p>The requirement to set up and run an internal audit function would significantly increase costs without a corresponding increase in the security for scheme members.</p>	

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	<p>IORPs are already subject (article 10 of the IORP Directive) to the requirement to have their annual accounts and annual reports approved by authorised persons (ie, an external auditor).</p> <p>An external auditor performs his/her task impartially and objectively and he/she is also not involved in the management of the IORP. An external auditor has the right to express his/her findings and recommendations freely. External audit reports can be accessed by the supervisory authorities who can check how the recommendations of the external auditor are addressed by the IORP.</p> <p>EIOPA should also take account of proportionality; small IORPs would need to be exempt from any new requirement in the area of internal audit.</p>	
75.	<p><b>What is the view of stakeholders on the proposed whistle-blowing obligation of the internal audit function?</b></p> <p>The NAPF's view is that EIOPA have not justified the case for a new whistle-blowing obligation as part of the internal audit function. The case should be made first.</p>	
76.	<p><b>ACTUARIAL FUNCTION</b></p> <p><b>What is the view of the stakeholders on the role and duties of the actuarial function of IORPs?</b></p> <p>As EIOPA recognises, the ultimate responsibility for making funding decisions in a pension scheme</p>	

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	<p>rests with the trustees or managers, and not with the actuary. It is important that the definition of actuarial function should recognise this fact.</p> <p>We also agree with EIOPA there should be no requirement for DC schemes to have an actuarial function.</p>	
77.	<p><b>Are the requirements of Solvency II the correct starting point for the actuarial function?</b></p> <p>It is not clear that the definition of actuarial function within the IORP Directive is inadequate, and therefore that the case for change has been made. It is worth noting that actuaries are already covered by professional standards in many Member States in addition to legislative requirements, and that these standards cover a number of the areas contained within the Solvency II definition (e.g. assessing the sufficiency and quality of data).</p> <p>However, the requirements in the Solvency II definition of actuarial function seem largely unobjectionable (although some are less likely to be relevant in an IORP context).</p>	
78.	<p><b>Do you agree with the importance of independence of the actuarial function? What do stakeholders perceive as the necessary criteria for the independence of the actuarial function?</b></p> <p>Conceptually, we agree that the actuary should be able to exercise independent judgement. However, this should not prevent the actuary being employed by the IORP or its sponsoring employer. This matter might be better dealt with through professional conduct standards, rather than specifically through legislation.</p>	

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	<p>The competence to guarantee operational independence of actuaries should be left to Member States.</p>	
<p>79.</p>	<p><b>Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?</b></p> <p>The claim that standardising the actuarial function will 'alleviate cross-border activity' seems exaggerated.</p> <p>Although the proposals might lead to little practical difference in the way that actuaries operate, it is likely that there would be some additional costs as actuaries seek to reassure themselves that they are complying appropriately with the revised definition of actuarial function.</p>	
<p>80.</p>	<p><b>OUTSOURCING</b></p> <p><b>Do stakeholders agree that the material requirements on insurers in respect of outsourcing should also apply to IORPs?</b></p> <p>EIOPA's cautionary note about the pros and cons of new regulations on outsourcing is welcome.</p> <p>Most outsourcing is to organisations that are already regulated in one way or another. EIOPA should beware duplication.</p> <p>Furthermore, EIOPA should be clearer about its justification for a written statement on outsourcing.</p>	

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	Although this may not sound like a major imposition, it adds an extra item to the administrative burdens on IORPs. The UK has a 'one in, one out' rule for regulations. Will EIOPA support a similar approach?	
81.	<b>Do stakeholders agree with the standardisation of outsourcing process in order to enlarge the cross-border activity?</b>	
82.	<b>What are the minum outsourcing contract elements stakeholders consider as useful to ensure the protection for IORP members and beneficiaries?</b>	
83.	<p><b>CUSTODIAN / DEPOSITARY</b></p> <p><b>What is the view of the stakeholders on the proposed treatment of depositaries?</b></p> <p>The role of the depositary in the investment fund universe is very specific. As the consultation notes, it relates both to oversight of the fund and safekeeping of assets.</p> <p>As the consultation also correctly notes, there is a real danger of duplication by applying the principle of a depositary to pension institutions whose oversight structures (and general governance structures) are not comparable to those of investment funds. This is particularly evident in the case of trust-based schemes where the trustees have a specific legal duty of oversight (paragraph 26.3.22) and must ensure safekeeping of assets.</p>	

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	<p>UK occupational schemes will typically use the services of a custodian. For this reason, we strongly oppose Option 2 and lean towards Option 1. If the current provision is unacceptable to EIOPA, then Option 3, recognising the specificities of trust-based provision and leaving national discretion over DB schemes, would be the best option.</p>	
84.	<p><b>How do stakeholders evaluate the positive and negative impacts of the proposals?</b></p>	
85.	<p><b>What do stakeholders anticipate in terms of cost and other consequences of the implementation of a compulsory regime regarding the appointment of a depositary under options 2 and 3 for: (a) the safe-keeping of assets; (b) oversight functions?</b></p> <p>Some large trust-based IORPs keep the depositary function in-house in order to maximise efficiency and minimise costs to members. The role of the trustees ensures that these activities are carried out responsibly.</p> <p>The NAPF suggests that the IORP Directive should continue to provide this flexibility.</p> <p>For this reason, the NAPF favours Option One – leave the IORP Directive unchanged.</p>	
86.	<p><b>What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements regarding: (a) the need for a written contract; (b) the role of a depositary in terms of safe-keeping; (c) the liability regime of depositaries; (d) the list of minimum oversight functions that should be perform; (e)</b></p>	

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**conflict of interest?**

The NAPF favours option 1 because the costs of changing the current IORP Directive would outweigh the potential benefits.

The main positive and negative impacts of the proposed options are:

**Option 1: Maintaining Directive**

*Positive impacts:*

The subsidiarity principle is respected, so it allows for more flexibility. The costs for the IORP and for the members/beneficiaries will not increase.

*Negative impacts:*

Keeping the different regimes between Member States.

**Option 2: Compulsory regime depends on legal form of the IORP:**

*Positive impacts:*

None foreseen

*Negative impacts:*

This option would lead to an increase in charges that would be passed to members.

**Option 3: Compulsory regime depends on the type of pension scheme**

*Positive impacts:*

The appointment of a depositary for DB schemes would remain at the discretion of Member States.

The principle of subsidiarity would be at least respected for such schemes.

*Negative impacts:*

This option would increase charges for IORPs with DC schemes that would be passed on to members.

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	This option would lead to uncertainty because of the lack of clarity in the taxonomy of different pension schemes.	
87.	<b>Do stakeholders agree that the list of minimum oversight functions that should be performed by a depositary is appropriate?</b>	
88.	<b>What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements that should be verified in case a depositary is not appointed?</b>	
89.	<b>INFORMATION TO SUPERVISORS</b>  <b>Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?</b>	
90.	<b>Would stakeholders welcome convergence of provision of information to supervisors: (i) completely; (ii) in certain fields; (iii) not at all.</b>	
91.	<b>INFORMATION TO MEMBERS / BENEFICIARIES</b>	

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**Do stakeholders believe that additional information requirements - besides the current ones - are not only necessary for DC schemes, but also for DB schemes?**

The NAPF accepts that additional information requirements for DB schemes could help to improve communications with members. Some high-level EU standards could provide a useful foundation.

However, it will be important to take account of the specificities of DB pensions and their differences from DC. Any standards must also allow flexibility for national supervisors to implement them flexibly in each Member State.

92.

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

The NAPF strongly supports the provision of clear information to members of DC schemes. This is why the NAPF's Pension Quality Mark, which has now been awarded to 128 schemes, identifies communications as one of the three sets of criteria (alongside contributions and governance) by which the quality of applicant for the Mark are assessed.

The NAPF is also working to help pension schemes provide clearer information to savers about the costs and charges levied by their DC scheme. We recently convened a Charges Summit, bringing together the key stakeholders across the pensions sector. The Summit's aim was to develop an

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	<p>industry code of practice on the transparency of fees and charges, and to make it easier for people to compare pensions. A code could also help wider monitoring and comparison of industry charges in the public interest.</p> <p>An EU-level KID could help to strengthen communications with DC members, but (as in our answer to Q.41 above on information for members of DB pension schemes), it would need to be very high-level, leaving plenty of room for detailed implementation at Member State level.</p>	
93.	<p><b>How would stakeholders suggest communicating in the KID the risk/reward profile and/or the time horizon of different investment options? Do they think that the risk ranking should be the same for all time horizons, or should vary with time horizons, allowing for a more favourable ranking of equity-oriented investment options for long horizons? How should performance scenarios be conceived? Should they vary for different asset allocations, allowing for a risk premium for equity-oriented investment options? What a reasonable measure of the risk premium would be?</b></p>	
94.	<p><b>Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?</b></p> <p>This is already required under the UK's Disclosure regulations for DC pension schemes.</p>	

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	<p>However, the NAPF accepts that there is a role for high-level standards to improve pension provision across all Member States. These standards could require information on:</p> <ul style="list-style-type: none"> <li>• contributions paid in;</li> <li>• investment returns;</li> <li>• charges; and</li> <li>• expected benefits</li> </ul>	
95.	<p><b>What is the view of stakeholders as regards the level of harmonisation of information requirements that can be reasonably achieved with the revised IORP directive? Besides those envisaged by the EIOPA advice, are there other parts of the regulation that should be harmonized?</b></p>	
96.	<p><b>Do stakeholders agree with the impact assessment of the EIOPA proposals?</b></p>	